

Road to Justice

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INTRODUCTION

I will say that 2007 will remain a memorable year as it had several incidents which attempted or turned the wave towards rule of law, justice and democracy in Pakistan or highlighted that issue. The year started with the sacking of Chief Justice on 9th of March and ended sadly with the assassination of twice premier BeNazir Bhuttoo on 27 December 2007 and I am afraid that depicts the history of Pakistan - both fascinating as well as tragic.

Pakistan is going through one of its hardest times where democracy has been derailed, will of people is suppressed and political differences are being solved by might. I am optimistic that people's efforts will be fruitful and Pakistanis as a nation will see a change in their country's political life style in coming years and countrymen will once for all rid the nation from undemocratic rule and practices and provide a parliamentary democratic structure in line with 73 Constitution with rule of law and justice as its salient features. Nation needs justice before justice becomes extinct in our society where elections are held fairly, courts function without fear, judiciary & military is 'sub judice' and accountable to people and accountability is maintained through institutions not by individuals I believe that God Almighty has given this nation an opportunity and a piece

of land which they can call it their own , and they all need to serve their country and bring about some positive changes the way political business is conducted in the country and the way courts administer Justice. Decisions of public importance if taken fairly will raise our heads high and May our country gets the rulers of which the nation truly deserves.

I have tried to pen down my feelings though sometimes I am idealistic but still if we need to travel on the path to democracy and rule of law & justice, we need to know its road map therefore my compilation of these articles into a book is a small contribution to the people of Pakistan whom I hold very dear and admire their forbearance despite all the ills in the society to stick to the original principle on which the country was achieved.

SPECIAL THANKS

I must thank my wife Nadia, my son Humza and all my team at my chamber in particular my colleague Kashif Umair for his technical assistance, as they all have been very kind to me in sharing their thoughts. My special thanks to my parents who have always prayed for my success unconditionally.

Chapter 1

Articles related to Judiciary

‘Yet another blow on the weaker judiciary of Pakistan’

Last full decade of Army Chief cum President General Mushraf is full of black days, and it has happened so many times that we feel reluctant to call it a black day. On 12 October Army came to Capture capital in defiance of Prime Ministerial orders and that was considered a black day, Chief Justice Siddiqui was made to go home and Judges took oath under PCO, again that was called a black day and now again Chief Justice was in some what similar style and circumstances was confined and reduced to a normal man, now critics call it again a black day. I differ, as it is an under statement, we must reconsider as we can not have 3 black days in 10 years. So lets call it a ‘Chief Day’ one chief tells the other who is real chief, the other chief tried to be chief and real chief confined him to a chief he really is in a chiefly manner. In the west the news was taken that an Army Chief called the Chief Justice in his army camp, asked him to leave honourably or face the wrath and upon his refusal confined & reduced him till the evening against his will and shuffled the whole Supreme Court and put a reference against Chief Justice in the Supreme Judicial Council who will hear dozen of allegations full of metal against their peer on 13 March 2007. That’s the way the current government is used to changing ‘thanidars’ and the same way they have decided to change the Chief Justice. Irony is that his fellow judges rather than enquiring the well being of their Chief and ordering for his production and availability in Supreme Court so that proper consultation could take place as to resolving the President’s reference to (SJD) Supreme Judicial Council, ideally a full court reference of all judges to decide

the full mechanism of Article 209, instead they went ahead and took oaths as was desired by an other Chief and people saw them congratulating each other on this victory. We see that when its time of Judicial unity one can always find judges who would come forward and act against their own peer, army does not do that when time comes, and they always boost of this quality.

Now we must look at reasons as to why chief has to go. I spoke to a few friends who were saying since Christmas that chief is going then came Arsalan (CJ's son's) issue, letters started circling here and there and a story in popular channels in Pakistan on bribery in judiciary and last nail in coffin a letter purported to be from Naeem Bhukhari which was highly circulated as I myself received it from USA. These were the chain of events that gave rise to intelligent bye standards that 'cookie is cooking' and cat was out of the bag on 9th March. Why it happened is very crucial. I think Chief was acting as a real chief. He gave a very popular judgment in public against steel mill sell off, he was hearing cases of missing people which was against the desires of intelligence top brass, he gave access to truly affected people like 'Sonia Naz' & 'Mukhtaran Maee' against the wishes of Police though he may have gone little bit far in doing so. And he was about to decide very few important constitutional matters in next 6 months and looking at his track may be 'they' were not truly satisfied whether he will given them any levy. I think they panicked.

I personally am in favour of judicial activism when government of the day fails to deliver truly the relief people deserves, unconstitutional means follow when constitution fails to address the real issues now I

feel our favourite general is entering into that regime and next 6 months are very crucial for him. The way Chief Justice was aggravated by attacks on his personal life for last 12 weeks, similarly I feel he himself is taking aggravated decisions and critic says he has shot on his own foot by sacking the Chief Justice.

I myself am a witness of the fruit of pro active judicial work when Chief Justice last year upon my request asked IG Punjab to register a case of murdered woman (Zahida Parveen) in Gujrat upon the request of his elderly parents over 70 years of age living in UK. The girl was brutally bruised and killed and later was buried by her ex-husband without her parents present. Even after Chief's intervention FIR was registered good 6 months after her death. Though her parents still did not get trial or complete justice but this gives the reader an idea of state of play. We can not punish him for the good he intended to do in the country.

How this change procedurally has been carried out is a mockery of justice. Even chief justice deserves justice and due process of law, he is not above law. Article 209 is very clear. Chief is always chief. He can not be tamed, confused, reduced and confined. He could not have been called to army camp and humiliated by asking to resign. Filing reference was President's prerogative and after filing that Reference CJ should have been allowed to attend SC and decide as to the fair conduct & hearing of that reference and peers would independently decide on it. They had already done so in the past at the time of unprecedented clash of views when Honourable Sajjad Ali Shah was Chief Justice and his peers jointly decided to ask him to step down for the sake of unity in judiciary. They would have done it this time too

and nation becomes strong only with these passages given the opportunity.

Government has no leg to stand on the issue of abuse of power and corruption when Steel Mill Judgement, land grabbing mafia, sugar and cement crisis, continuous stock exchange crash(es), Nabbed' ministers and Bajaur and Dama Dola killings are shining like medals on its collar. No sacking took place then and no reference was filed. Government should have resigned in any event or could have been sacked after Steel Mills Judgement. English cabinet would have resigned if that has been a decision by English Court.

Nexus of our judges with Generals have ruined the future of democracy in Pakistan. Nepotism, bribery, lawlessness, unmeritorious appointments and lack of respect of law in an unjust society has made life impossible for lay Pakistanis who are looking towards a 'messiah' for their salvation. In order to continue this trail of unlawful rule, judiciary has weakened further and Chief Justice has been made to go home the second time. Ordering to take oath under PCO hit the nail aright and judiciary lost its teeth as an institution long ago. Will Iftikhar Choudhary get a fair hearing when his peers do not speak up upon his confinement, when he is stripped off his freedom of speech and his lawful privileges, its any body's guess though, I hope he does.

Now what will happen, I think even Chief Justice deserves a fair hearting, a due respect and proper treatment to have his legal team for consultation and advice and unless Council decides otherwise all the

privileges he deserves in the remit of constitution. Media trial must end here, now Chief Justice is a victim of his own deeds good or bad and let the council (SJC) decide on 13th the future course of business.

I must mention here that whilst CJ had a chance, he could have decided some constitutional issues too whilst he was in power. Now regrets is an asset for his memory when he witnessed the Army chief retaining his uniform post 31 Dec 2004 he remained silent, when he rejected to entertain two offices bill, when his office entertained president's reference against NWFP assembly passed a bill but he refused to give relief against a challenge to 17th amendment. Equality is a virtue of which our SC is envy of especially when army is out of barracks and is in real politics. We still pray that justice is done with the Chief Justice. I must mention here that sitting in London I could find only one gentleman out of the whole judicial class (Mr. Justice Wajeeh uddin Ahmed) who showed his guts and voiced the true feelings of lawyers all around and judicial class and demanded the fair treatment of the Chief Justice. I must end here by saying that if his fellow peers decide in his favour then including Attorney General from lower to the top brass must be ready to resign as filing reference on unfounded charges and on the basis of some letter(s) is a serious business and may amount to contempt for those who chose to ridicule the Chief in this unbecoming manner and especially for the Govt who have no track record of angels among their ranks. President must also be ready to digest more reference(s) against his own hand picked government if this reference succeeds as it opens a window to people to complain and demand sacking of his own Ministers amongst those are some real absconders and criminals who are looting the state of Pakistan on wholesale basis. Nation is demanding justice and it must

be seen to be done. One time the same thing The Queen of England did to his Chief Justice Edward Coke 400 years ago and people took to street until that sacking was off, and later people got him elected and he was made a speaker of the assembly without opposition by all the houses of parliament. That's the power of people where rule of law exist.

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‘Innocent until proven guilty’

In the last 36 years only one judge has been tested through Supreme Judicial Council and that was Mr. Justice Shaukat Ali and that was in 70's since then though judiciary had been more or less a spectator in all major constitutional struggles and could not play a due role either due to ‘law of necessity’ invented by Justice Munir or PCO's introduced by military hierarchy. One thing is sure that in the past most of the judges caved in soon they saw an army man standing outside or inside their house telling them that they are fired unless resign otherwise and thus no struggle for judicial independence could take place from inside the judiciary until the day of 9th March 2007. Bar and Bench act like a hand in glove and they can only struggle for rule of law if the victim itself stands for supremacy of constitution.

Its rule of natural justice that a person accused of any allegation is innocent until proven guilty. Chief Justice is made subject to negative frenzy & media trial which seems one sided. On 20 March BBC published the whole of the government dossier which was leaked to them contrary to a gagging order by the tribunal hearing the reference against the Chief Justice. Wide circulation of the letter of a lawyer Mr. Bukhari all around and Govt Ministers without restrictions holding press conference(s) and issuing statements and highest office holders attending

special live interviews about chief Justice's personal life also give rise to serious questions of fair hearing of the reference and throw doubts about the true motive of the Government behind this reference.

Its rare in British justice system in last around 400 years of this ever occurring, even Government of Blair since 1990's which took controversial and split decisions like Iraq war has been challenged on various fronts by Law Lords whether it is the issue of 'detaining foreign nationals' or putting foreign national under controlled orders who cant be deported and pose threat to state. UK Ministers have been crying out helplessly but no executive had the guts to challenge the authority of the highest judicial office, let alone mal handling. Precedent set was that even matters involving national security do not allow challenging the authority of high judicial office.

All the happenings in Pakistan give a picture of Pakistani government as being intolerant and weary of free press and rule of law and can not stand even positive criticism. Nation is right in feeling that if all this is not stopped at the earliest stages it will not end disastrously as we have witnessed some horrific developments since 9 March. Despite there being only one precedent so far in the case of President of Pakistan v Shaukat Ali PLD 1971 585 which is prior to the formulation of the Constitution of Pakistan 1973, people need answers to serious

questions which have arisen from this crisis and Apex court has the key to those answers because of the sensitivity involved around the office of sitting Chief Judge.

If today Lord Chief Justice Iftikhar Mohammed Chaudhary is removed unconstitutionally, what guarantees lies ahead that any future Chief Justice if challenges the govt over their inefficiencies, abuse of power, corrupt practices or intends to hear any controversial case against the Govt may not be removed arbitrarily and detained by announcing and filing merely a plain reference before the adjudication tribunal (SJC) challenging his personal conduct. What procedure safeguard that future CJ will not be humiliated publicly as was the case with the current chief Justice whose protocol was withdrawn, liberty was snatched, coat was torn, national flag was taken off his residence and his cars were fork lifted and shown on TV live to give a strong message of 'might is right' to the nation. It does not end here, he was later mal handled and was made subject to worst media trial at the hands of 68 Ministers of the current Govt, in addition to that he is gagged by SJC order and he can't even answer those allegations. In any event judges speak through their judgments as they are not political leaders and current chief has many judgments for public to refer to. In these circumstances can he get a fair trial is any body's guess but to me, not at all.

We must learn an other lesson or at least attempt to learn one, and nation is right in demanding future guarantees as it is a dangerous tendency to disrespect the office of the sitting CJ who is a guardian of justice and messiah for all those who are victims at the hands of unbridled powerful police and law enforcement agencies who do not read law, and notice their duties and blindly follow orders from top without looking into its legality. Only Supreme Court itself, from its own internal mechanism can address and challenge it and may save this institution by due consultation, wisdom, patience and bring the state out of this constitutional crisis.

Rule of law has its own price and at this moment Pakistan needs a ruler who can make rule of law a distinctive feature of his governance and eradicate all the evils in civil society and ensure justice at the door step of a common man. All this is happening because tracheotomy and balance of power is non existent and all the power is in one man's hand. Only fair, faster and firmer justice and free elections can ensure that civil normalcy returns as soon as possible in Pakistan. Pakistani people can live in poverty a little longer but living in an unjust society in unthinkable where their own chief justice begs for justice and rule of law. It's a dangerous tendency to try to tame the important pillar of state and intimidating the office of Chief justice and there is still time to save the nation from this uncalled for judicial crisis by restoring & reinstating The Chief

Justice honourably as the Ginny is not fully out of bottle yet.
It's not me alone; the whole world is demanding reinstatement
with apology.

21 March 2007

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Pakistan*

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‘Chief Justice needs a fair trial and treatment befitting to his office’

I endorse the demand of the lawyers as well as intelligent circles of the nation for a fair treatment of the chief justice in the current prevailing situation. The whole nation is condemning the mal handling of Chief Justice at the hands of elite force on 13 March when CJ desired to attend the Supreme Judicial Council meeting on his own will on foot. The footage was shameless for all of us when he was mal handled and it gives a horrific picture, as if Chief justice’s self respect is not intact, how can the nation feel at ease that sovereignty of state and respect of common man is secure. It is matter of caution now as nation may take to street and can take law in their own hands if this mal treatment continues.

In the current geo political situation in the country The President must consider an option of reconciliation with Chief Justice as the Government with Steel Mill Judgment, land grabbing mafia, sugar and cement crisis, continuous stock exchange crash(es), and Nabbed’ ministers amongst their ranks will struggle to prove beyond reasonable doubt the issue and allegations of misconduct and abuse of power especially when they themselves drive bullet proof cars at public expense and order new planes for their personal use. The demand of the nation is that Justices against whom reference and complaints of

corruption and misconduct are pending must not be made part of the adjudication panel as desired by the Chief justice. However current situation desires all heads of constitutional tracheotomy to observe extreme patience and wisdom and be visionary to avoid conflicts which have serious repercussions for the state of Pakistan.

Current Chief is no threat to the President and or army as past record speaks for itself from incidents like Chief Justice was waiting for 30 minutes in a queue to bid farewell to the current President at the 'Wattoo's' wedding, attending presidential camp office to present report about 'SC annual progress', clearing backlog of around 20,000 extra cases, setting up 'human right wing' in SC to bring about judicial security into unlimited powers of police, no major constitutional decision was taken against army chief on his uniform and on its expiry or against president on holding his dual office, or challenge to 17th amendment in his tenure and no condition of ministerial resignation in 'steel mills' reference show that the said Chief has the capacity to work with the government and have never intended to confront army or army led rulers, in fact he was more deadly for opposition than his predecessors.

It must be pointed out here that if this reference continues it will make our country a laughing stock in the west, and we will be

ridiculed when our dirty laundry is washed by our own self in front of all the world media, however in any event, Government must allow the chief justice the right he deserves at least to have a fair hearing against this reference. Chief Justice deserves a due respect and proper treatment to have his legal team for consultation and advice and unless Supreme Judicial Council decides otherwise, all the privileges he deserves in the remit of constitution must be provided. At least Chief deserves the honour to have a fair hearing and at all times he must be treated with respect. Army General must bear in mind that even enemies in battlefield are given proper funeral & burial. I think media trial of Chief Justice must end here, now Chief Justice is a victim of his own deeds.

Top Judicial brass as an institution must have a full court reference to get out of this constitutional crisis and in principle either restore respect for which Chief Justice rightly deserve or assure fairness in his reference. Ideally SC must consider waiting for the arrival of the senior most Judge Rana Bhagwan Das too to construct a complaint free Supreme Judicial council. Lesson of history is that we do not learn any lesson from it and around 400 years ago The Queen of England tried to subdue her Chief Justice Mr. Justice Edward Coke and people resented and took to street until that sacking was off. It's time that Chief Justice is offered a fair hearing.

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‘Justice Delayed is Justice Denied’

I was quite amused to read that those who are following President’s reference have filed a request to Acting Chief Justice to form a full court reference to adjudicate Chief Justice’s legal questions which he posed by his petition which has a massive public and organisational support.

I remember that British Pakistani lawyers wrote to Acting Chief Justice(s) who then was Mr. justice Javed Iqbal on 15 March 2007 and further to current Acting CJ Mr. Justice Rana Bhagwan Das on 24 March 2007 requesting them to convene a larger bench ideally a full court reference to determine the true interpretation of Article 209, and 180. As the requested larger bench was not constituted therefore British Lawyers on 5th of April moved the petition under ref 15/2007 to Supreme Court asking the SC to determine whether the term ‘non functional Chief Justice of Pakistan’ is Constitutional and requested true interpretation of the relevant article(s).

I think Government is out of shock now which they had after hearing ‘NO’ from Chief Justice and they are returning to sanity now. Even then and now full court reference is the only way forward to pre determine the procedure to be adopted if a reference is filed against sitting Chief Justice and to answer the question(s) whether a reference may be filed against the sitting

Chief Justice before Supreme Judicial Council at all and if the answer is positive, then what would be the construction of Supreme Judicial Council if it is to adjudicate the complainant against its own boss as Chief Justice himself sits as a head of that chamber under constitution.

Its ironic that in Pakistan a Colonel can not hear a complaint amounting to court martial along with corpse Commander(s) against their own chief even if he is involved in politics directly, addresses public gatherings daringly whilst being a chief of armed forces, sends a sitting Chief Justice (Mr. Justice Siddiqui) home, allegedly imprison an other Chief Justice (Mr. Justice Choudhary), forces sitting President to resign (President Tarar) and topple the system of Government (Mr. Nawaz Sharif) but no army finds it offensive and or ultra virus looking at article 6 of the constitution of Pakistan 1973. I thought world armed forces are bound to follow only legal orders, can an army officer follow an order of military coup if it is ultra virus is a question yet to be determined by our top brass of army. Even Bangladesh is coming out of this anomaly and their army has proven their professionalism by allowing the system of civil governance to run despite of its inherent weaknesses and continuous calamities like flood devastation.

Our judicial system is victimised in a way that rulers have made redundant its chief and the whole body is running like a headless chicken whose head is cut. Its a mockery of justice when chief justice begs for justice from his own court and his applications are rejected and political pressure is mounting every day. Justice delayed is justice denied and chances are that the more time goes by; there lesser chances that there will be any justice with Chief justice of Pakistan Iftikhar Mohammed Chaudhary.

Judges and generals must not be above the law. When no one is above the law in the constitution then it must be translated in letter and spirit. Independent accountability across the board including generals and Judges must be ensured to root out black sheep out of system on demand of public. Judges and generals do make mistakes and the whole nation suffers as a result. Corruption is not attached to one man its whole system which has a virus of corruption, and accountability covering all, will be a desire which will not be achieved without independence of judiciary.

Justice Choudhary is remediless as no stay order has been granted against orders of making him non-functional whilst his petition is pending and it may take sometime for his reference to finish which supports my contention that justice delayed will

rule out justice at all with sitting Chief Justice. Judges must sit together and form a view quickly in a week or so, otherwise either the historian will write that it was not one judge who stood up but the whole judiciary along with legal fraternity and civil society along with justice Choudhary stood up against brute force and illegal attempt of tyranny to tame the high office of judiciary or was it a lone voice in a huge gathering calling for sanity. Nation pray that justice choudhary's voice may not remain lone in the huge procession of masses. S M Zafar, Fakhuruddin G Ibrahim, Sharif Uddin Pirzada and Bar's top brass must play their role to assist restoring common sense and reference must be withdrawn at once to rid the nation of more misery and let the judges decide the future course and procedure of such references.

3rd May 2007

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Pakistan

‘War of Words’

Pakistan is amongst fierce fight over the power struggle of two institutions where the question is whether Judiciary allows military this time again or stops the ‘unstained support’ to any military ruler in the country. These are valid questions raised by many analysts, senior lawyers and jurists in the last few months especially after 9 March 2007, however what nation witnessed on 26 May 2007 at Supreme Court Bar conference cum legal procession was a sheer anger and uncontrolled fire which is similar to a ‘head butt’ of famous footballer Zinedine Zidane in the Football World Cup final on Sunday 9th July 2006 which caused France to lose the world cup final against Italy.

I would urge the Lawyers movement and head lawyers that sanity must prevail and their papers on law must be apt to be considered not only by rulers but the main stream parties who should be asked to include those names in their manifestos in coming elections. If wisdom is not preached at this juncture then the whole argument will fail where thousands of lawyers supported the cause all around the globe. Senior lawyers must consider the forum’s sanctity, decorum and use their oratory for the sake of Pakistan as with mere words & cheap slogans army is not going to leave the lusty powerful job until the transitional arrangements are in place and or guaranteed by visionary leaders and road map is given by those who aim the

independence of judiciary. So ‘calm down’ and ‘initiate a spade work’ which will be welcomed and honoured by millions in the country and many abroad. If such guidance remained absent, the whole struggle may be futile if the top judge is restored overnight, as without political backing of top parties or in the absence of valid movement coupled with political objective(s) without a leader to lead is bound to collapse, so vision is required to turn dreams into reality.

Nexus of our judges with Generals so far in Pakistan had ruined the future of democracy in Pakistan. Nepotism, bribery, lawlessness, unmeritorious appointments at top slots and lack of respect for rule of law in an unjust society made life impossible for lay Pakistanis who are in millions and they have been looking towards a ‘messiah’ for years which never turned up to their door steps. If these dreams are to be translated in reality then calmly composed visionary orators must move forward keeping their heads high with their road map to the goal intact. Supreme Court Bar Association seminar would have been best served, if the speakers had given road map to such destination which the lawyers are aiming for. Crucial topics such as appointment of judges via non political and unbiased commission, non controversial non political future lawyers who in the end become judges, politics free bar, training of lawyers and judges, and accountability of top judiciary, financial

autonomy of Top judiciary, and protection of judges, separation of administration from judiciary coupled with safe guards of judiciary turning into another military style unbridled power were the questions which remained unanswered in that gathering.

If judiciary is to be made independent the process is not a days job, it can be achieved but not impossible and the main contribution is required from top national parties to adhere what lawyers say and top military brass to see if the time has come to lay off and allow the judiciary to function as a monitor which in fact is their job. However, lawyers must not waste such opportunities to say what the nation desire instead of wasting the top slots in cheap slogans as media can not continuously cover such events which are futile in its results. Our non reconciliatory habits and unwise governance has turned our country into a 'mud slinging' crowd which is devoid of supreme national interest of the country and top intelligentsia whether they are lawyers, journalists or analysts, they all must try to separate chaff from grain at all times. The blame of one sheep may not be rightly attached to the herd if no visible evidence, legal authority or constitutional backing is available especially if those words harm the cause in return.

Its election year and only a fair and independent judiciary can guarantee holding of fair election(s) in Pakistan. These elections

can't be held fairly if the judiciary consciously does not pave the way for wise manoeuvring and Govt of the day does not offer for a round table conference to have a dialogue based on equality where issues such as free elections, exit of military from national politics including Presidential elections, caretaker set up and independent and powerful election commissioner and return of exiled leader and time frame is discussed.

I know for a fact that these steps may not be taken as 12th May massacre is still under investigation by the top Sindh judiciary and whole sale expulsion orders against Senior lawyer(s) of the Higher Courts of Pakistan, Journalist(s), Human Rights Commission members, from one Province in violation of the various articles including Article 15 & 25 of the Constitution of Pakistan 1973 are noteworthy and tells the state of affairs in Pakistan. These steps will lessen the freedom of movement & press and liberty to all citizens and will promote regionalism and will destroy the very principle on which Pakistan was made. I feel that growing calls for contempt of court notices here and there must end here and nation must allow the court to give judgment in chief justice's case, if he is not restored by then, in that case the judgment in Chief Justice's case is the only key which will open various boxes and one of which may bring the good news for the nation, so let's all wait

and see and lawyers must think carefully which way to turn this struggle mind you 'head butts' can cause to lose the match.

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‘Death dance has begun’

In Pakistan internal war between institutions such as legislatures who are standing for parliamentary sovereignty, lawyers in street for judicial independence and journalists for free press & media are all against one institution and the whole commotion is taking a final shape. Whilst on the other hand American and European press and institutions have started sorting their ranks and have started friendly fire whether its New York Times or British Press towards a military man who has enjoyed the lusty position since 1999 in particular after providing an ‘unstinted support’ to United States in their ‘war against terrorism’. Now the same man is causing distress and bringing the name of sacred into disrepute as now people are hitting at those behind this man. Whether its Chief Justice issue, MQM counter rally resulting in Killings, media bashing or political arrests all at once have started going against General Pervez Musharraf who has an easy ride in his solo flight towards political kingdom after ousting a history’s most power Prime Minister in the Parliament on October 12, 1999.

His own given freedom to media has turned out to be a thorn in his throat as he did not know that freedom though does not come easy, however, once attained can not be taken away, salve is a slave unless he is released that he is free as Pakistan is no longer same old country where Prime Minister can be hanged

over night silently. Now the people of Pakistan are not ready to sacrifice their chief justice on the military alter without ensuring him a fair trial. Nation for the first time in the short history is demanding 'reasons of such hasty action' and justice with 'the man of law.' Media has played an enormous role to awaken this long slept jinni of people which has a bigger role in giving support and shelving and shuffling of government at the hands of military regime. Media freedom was not a favour to nation; it was inevitable to counter bordering propaganda of our rival country and to remain part of the international community which is knit into a global village with the communication revolution in last decade.

There is not a shred of doubt that 75% establishment and bureaucracy as well as public representation is all under control of our powerful military might and some even say that it has crept in people's blood, but when other institutions start crumbling and regionalism start taking shape, then loyalists always keep an eye on the wider 'supreme interest of the state' and call out loud that If wisdom is not preached and practised at this sensitive time, country may suffer a great damage. General public love military, if it remains at borders or delivers when it assumes the role of a 'messiah' and people's happiness turns into a sour dream if their presence in govt cause the national structure and Federation a 'blood cancer'.

Now every one knows the root cause of this problem so who will bell the cat is the key question. We have not left any national figure or leader or even elderly senior citizen carrying federation support alive or present in this danger to call it a day or initiate a credible national reconciliation, all are either dead or exiled. When power becomes uncontrollable then certain measures are taken to either bring that power in line with the norms or under any legal control, if those measures are not successful then elimination process takes place, instead of, peaceful transition. We are silent witness to the making of history. Army men are not made for politics and they are devoid of political wisdom to secure settlement of disputes by negotiations which are core to the Federation. They never have the will to come forward and try to save what's left. Their training is such that turning back is not an option readily considered and or available to them and consultation is not they practice but orders they follow. Its like an elephant force which if turns back will take the whole clan down with it, so decision lies with their chief to save the whole clan who sis following him.

This is the time that a national reconciliatory efforts must initiate at a 'round table talk' in order to consider holding a free and fair elections, return of exiled, and freedom of judiciary coupled with fully armed chief election commissioner to save

the federation. Pakistan is going through its worst crisis and we do not afford an incident like 71 where we lost Dhaka. We still have time to save, if we allow the political process to work the way founder of Pakistan intended and the way people mandated in the form of 1973 constitution. Let people of Pakistan decide who they want, and what they want. We need to respect the sanctity of vote upon which people obtained this country from colonial powers in 1947 without any army, fight and battle and we must respect those lonely main few political parties who have roots in the whole country as they represent the Federation and we must preserve them as our national asset. Strong system of governance is much better than sham slogans to kill or be killed. Only free and fair elections can save the man, the gun & the Federation and rulers must consider this sane voice which is shared by millions here and abroad. No one is above the law and none is the wisest, its people who are wise, its nation who is supreme, and it's public whose vote must count. If common sense is not followed and any ultra constitutional mechanism is experimented, I am afraid then death dance will start and who knows what and who does it take with it.

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‘And Chief Justice was Restored’

9 March 2007 will be remembered in the history of Pakistan as a ‘defining moment’ when ancient battle of Yazeed and Imam Hussain got a quick reminder to us all, that good and evil will always remain with the people till Dooms Day to judge their conscience and the victory will always be of good. Historic judgement of 20th July is a ‘turning point’ in our short history where a single man on the street conquered the minds and hearts of Pakistani people and 160 million souls sided by the victim of brute force. We are at a crossroad whether to move forward from here or run backwards and we must bear in mind that this opportunity may never knock our doors for a long time to come.

The writer From the British Pakistani lawyers platform wrote to General Pervez Musharraf on 12 March 2007 to consider withdrawing this reference as procedure adopted gives rise to serious questions of procedural impropriety and the way CJ was handled it will create suspicions whether Chief Justice can ever have a fair hearing if he is treated as guilty before even having a adjudication hearing for example, restraints to his access to SC, virtual house arrest, his privileges withdrawn, and keeping him incommunicado. I quote one paragraph from the 12 March letter which says as following, *“In the current geo political situation in the country The President must consider an option*

of reconciliation with Chief Justice and he has by tonight to facilitate a meeting with CJ as on 13 March 2007 CJD starts its contemplation over the charges against Chief Justice and it will be too late by then. Government with Steel Mill Judgment, land grabbing mafia, sugar and cement crisis, continuous stock exchange crash(es), and Nabbed' ministers amongst their ranks will struggle to prove beyond reasonable doubt the issue of misconduct and abuse of power especially when they themselves drive bullet proof cars at public expense. However current situation desires all heads of constitutional tracheotomy to observe extreme patience and wisdom and be visionary to avoid conflicts which have serious repercussions for the state of Pakistan”.

No action was taken and I assume the President may not have read that letter either. The writer also wrote to Acting Chief Justice(s) then was Mr. justice Javed Iqbal on 15 March and Mr. Justice Rana Bhagwan Das on 24 March 2007 requesting them to convene a full court reference to determine the true interpretation of Article 209, and 180. But no full bench was constituted and later British Lawyers on 5th of April moved the petition under ref 15/2007 to Supreme Court asking the SC to determine whether the term ‘non functional Chief Justice of Pakistan’ is Constitutional and requested true interpretation of the relevant article(s). There were around 35 other petitions too

including that of Chief Justice and thus this full hearing which ended on 20 July 2007.

I think the decision has given the unique pleasure to the nation and it's the second biggest incident after the independence, first being the 'nuke tests' on 28 May 1998 by Sharifs and second victory is CJ's case. Civil Society's work does not end here, they must be ready to work for the sovereign Parliament and raise issues wherever they see injustice. Praiseworthy media and newly born Superior Courts with fresh vigour must work hand in hand to root out the real evil from its ground and secure justice for the needy and play their role to break the orthodox nexus of judiciary with Generals. I think Pakistan must better be known for a tolerant, just and democratic society rather than 'militant in mind' and 'uniformed democracy' in its system of system.

Lawyers must not sit here either, their struggle was not to reinstate Chief Justice alone as that was the small picture, the big picture was always to struggle for true democracy, for a system not for a personality. Lawyers must be ready to convene a convention of all elected representatives and bodies to feed in their joint declaration(s) or demands to political parties to secure their support on issues like full judicial independence, financial autonomy to Superior Court, Separation of

administration from Judiciary, appointment of judges commission, breakage of nexus of judiciary and judges completely, viable accountability process of judges and generals to eradicate no sacred cow concept, promote non political bar & bench, promotion of ethical and professional lawyers, cheap justice at door step of common man and quick relief process, including security of judges. We must also ensure the continuation of judgements like 20 July especially in matters of future course of action i.e. stopping military coup de tats , Judges oaths under PCO's, Presidential referendums, uniformed president, and return of exiled etc.

Now that Chief Justice is fully armed and abreast with the challenges ahead he must ensure the safety and security of the State. Only a fair and independent judiciary can guarantee holding of fair election(s) in Pakistan where transit from military to civil takes place in an honourable fashion rather than by a blood bath, ideally at this juncture and a care taker set up & election commissioner is appointed in consultation with opposition and former judges who refused to take oath under PCO are given preference. People of Pakistan stood by Chief Justice for a better cause, not for a judge to complete his tenure but to see Pakistan as a vibrant economically powerful and strong democratic country. If that is not possible now then, we will have to wait for centuries for another follower of right to

challenge the tyrant of his time to pull the crowd. Decision is simple, this is the only Chief Justice of modern history who has regained his position by public support and now nation seeks justice.

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‘Judges Denial is an asset for state’

On 3 November 2007, 70 odd judges of the superior judiciary of Pakistan showed muscles and risking their livelihood, and liberty refused to bear allegiance to the outgoing General of Pakistan whilst they were considering an important decision as to whether a man with the gun can participate in elections for the top slot as head of a state of Pakistan. Those judges have shown courage and wisdom to curb the norm of military run democracy and all now rests on the politicians to translate the voice of the civil society, media and judiciary into action. They must not compromise this sacrifice on the altar of politics. If they can achieve that goal of establishing the rule of law and restore basic democratic rights of people to choose where independent judiciary monitor and media operates freely, then I congratulate the nation of 160 million people that those will be the last days of military intervention in Pakistani politics.

Alas that stance is yet divided and if politicians promote and shelter the law of necessity in political classes now, then no judge in future will ever risk losing the perks and luxury by refusing to accommodate the ‘law of necessity’ which we claim a lot, to have buried, with every going decision in Supreme Court. I agree that no one has the ultimate key to solve the crisis we are in, but everyone agrees that elections under emergency are virtually impossible where media is gagged and highest

judicial officers are in detention and most of the mobile lawyers are incarcerated. Election is an expression of free will as to who should govern on the name of people as they desire. In the circumstances where the will of masses is terrorised, bulldozed and detained, it's difficult to get the feeling of fairness. I must say that return of exiled is a good omen for Pakistani politics but time is ripe than opening back door channels of secret negotiations with any one particular party and damaging the system further, military leader must initiate open and transparent public discussion in the supreme national interest with all political parties at a round table ensuring presence of all heads of parties to discuss how a credible, free and fair elections can possibly be held which meets minimum international standards.

Those consultations may discuss the mechanism of inducting an independent and reliable care taker set up possibly consisting of non PCO judges along with powerful election commissioner who will impartially hold elections. At present the set up consists of a major component of people with aspirations and sympathies with pro General faction (Q League) except one or two, and above all the activities of the Attorney General must be stopped at once which are damaging the system further with his tricks almost every other day. I think judges issue is very simple to resolve by inviting them all to take oath under 1973

Constitution which is an easy solution which do not require any amendments in national laws and or constitution as the judge's will is not known when they are detained but it is only visible from their judgements. I must say all judges who reach to that highest forum are good judges, who have spent their life time in practising and preserving rule of law, and we must preserve them too, and we should not waste them as they are our honour, pride and an asset of the country. The top minds of our state need to consult with all political parties to achieve the independence of judiciary as currently the ruler's actions negates his claims that he believes in justice, fair play and free media.

Only a fair and independent judiciary can guarantee holding of a fair election(s) in Pakistan. These elections can't be held fairly if the head of judiciary on one day is begging justice in his own court, and the other day he is detained in his bungalow with his family and other colleagues. The picture this regime is showing the whole world of the state of play at judicial front is bleak and the humiliation nation feels over this issue is visible from their wider condemnation. These suggested actions are not imminent and may not happen at all, as our leadership lack political will and have no roots as well as wisdom which needs to solve the crisis they are in as they are following the advice of already condemned in every nook and corner of illegal circles.

The sane advice is to preserve what is left as we all are Pakistanis and ever one is amongst us, let's not demolish what we have built ourselves in years and let us not make our country a joke here and abroad in every one's eyes. I am pretty shocked when one of the Indian Doctor friend said the other day, 'feel free, now we will not attack you', I enquired why is that, he replied, 'we do not need to, as you will die fighting yourselves'. That is an eye opener for the rulers who consider them indispensable. The regime and all the stalwarts must realise the tenacity of the situation we are in, and our responsibility towards state requires our firm action and a word for outgoing ruler is if Pakistan is first, then why are we so scared of taking to each other, and why Pakistani media, Pakistani lawyers and human rights activists, Pakistani judges and Pakistan as a state is hostage to the will of one man, the nation needs an answer, sir? And why these fat cat advisors are not telling him the truth that, the time is up.

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‘It’s Difficult to be a Devil’s Advocate’

Post 9th March 2007, whilst lawyers of Pakistan gathered a storm in support of a victim Chief Justice and received nation’s appreciation all around, at the same time a few emerged as devil’s advocate on the national scene too. In adversarial system its common that you have a brief, either for or against and one has to lose the case too and accepting defeat graciously and winning honourably is the key, however its opposite in Pakistan. No one wins or lose normally.

Whilst condemning the acts against Naeem Bukhari, Khalid Ranjha and Wasim Sajjad a few renowned lawyers and a TV star in Pakistan as well as an un called for show of aggression against President’s chief lawyer Mr. Qasuri is condemnable in the highest terms, at the same time, those barristers who wish to render their services as devil’s advocate must be aware of the public sentiments which always go against those who argue beyond their brief and publicly incite hatred against the popular cause. When a lawyer represents a case of public interest, criticism of good and bad comes with the job, however when one over represents, one mixes rightly or wrongly one’s representations with one’s aspirations, and same is the case with a few stalwarts as they are never aware when and where to stop. In this context Mr. Pirzada the magician lawyer and S M Zafar are noteworthy as they never go out of their brief, thus never

risk reprisals. Military ruler devoid of legal sanctity is without doubt the most disliked legal animal in Pakistan at the moment, declared ‘an endangered species’ by Ms. Benazir Bhutto and let alone winning, fighting his case is not an easy job, and publicly representing I believe is the job of his clan of Q, not his lawyers.

In my practice in Britain, advocates exchange views, fight their cases in courts tooth and nail and during breaks or in the end often have a cup of coffee together in the bar room or court lounges. They are always cordial with each other and always show respect to the other side lawyer and at all times address them as ‘my learned friend’. The incident which we are witnessing on television these days of ‘blackening faces’ are rare in my years of practice in Britain. In fact, there is truly a culture of tolerance, acceptance of each other’s views and accepting defeat in the land from where all the barristers emanate. In fact, lawyers as other professionals perform their professional duty and in principle they must not be penalised for performing their professional duty.

It’s a red hearing for those who whilst representing initiate a debate and express personal slanderous views without evidence or justification about past or present popular leadership or a cause. In Pakistan if you wish to be a gutsy lawyer and publicly wish to say to a ‘bhuttoites’ that they are the one responsible for

sorting Mr. Bhutto out or declare Shraif's traitor or call lawyers as foreign agents then either one is mad or one is with beggars' belief that those who are paying you to represent a case will come to rescue the lawyer for madness. Or it will be highly unlikely that millions of supporters of those individual parties or cause will welcome those after those remarks with flowers as tolerance level is not that high yet in Pakistan and those who pay will rightly justify their payments for what one reaps for being a devil's advocate in the end, a black face.

However, the lawyers movement and its leaders must preach sanity and their papers on law must be apt to be considered by main stream political parties for their manifestos in coming elections. If wisdom is not preached at this juncture then the whole argument will fail where thousands of lawyers supported the cause all around the globe. Senior lawyers must consider the sensitivity of the situation, decorum and use their oratory for the sake of Pakistan and nomination of Wajihuddin Ahmed I think is a starting point towards the right direction.

Initiation of spade work early as possible is the message from abroad , as the independence of the whole institution is the aim and it must not be linked with winning one case or restoring one judge. Nexus of our judges with Generals so far in Pakistan hindered democratic flow and process and the struggle must be

for strengthening the institutions rather than promoting individuals. If system is strong enough and is allowed to run at its full capacity with free media and judiciary as monitors, it will automatically start bringing out leadership as the case is in India, Britain and United States.

If these dreams are to be translated in reality then visionary orators must keep their road map to the goal intact. Crucial topics such as appointment of judges via non political and unbiased commission, non controversial non political ethical future lawyers who in the end become judges, politics free bar, training of lawyers and judges, accountability & financial autonomy of top judiciary including their protection and true separation of administration from judiciary are the questions which as a overseas Pakistani lawyer I can think of to start with, however I know that the true work will start once the Ginny is in the bottle and military is shown exit from the civilian set up. However, what if that happens overnight, therefore lawyers must be ready to play their due role even if the task lands on them all of a sudden.

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‘Attorney General’s appointment, does Mushraf really wish to reconcile’

Ex Judge Malik Muhammad Qayyum has been appointed as new Attorney General by the President of Pakistan and critics are taking this appointment with caution despite Malik’s aspirations that he has joined to bridge the gap between Govt and lawyers and does not wish to pursue any future reference against Chief Justice. Lawyers are quick to note that he said the similar things when he resigned from judgeship and fraternity elected him President of the Supreme Court Bar Association of Pakistan and wished to see a change in country’s political life style where countrymen once for all rid the nation from military intervention in politics and provide a parliamentary democratic structure in line with 73 Constitution with rule of law and justice as its salient features. However, Mr Qayyum was content with a meeting with the President Musharraf and was confined to his achievement in respect of free medical assistance, few lakh rupees special grant to SCBA out of CM’s fund and possible ‘Lawyers Colony’ for SCBA members and retired leaving behind never ending rows after 12 months of his controversial tenure.

His judgements are very famous too, in one judgement he granted fines to top Cricketers and maligned Pakistan all over the world for corrupt practices and match fixing and brought

disrepute to home soil and on the other in April 1999, then Justice Qayyum found Ms Bhutto and her husband, Asif Ali Zardari, guilty of taking a \$4.3m (£3m) commission after awarding a pre-shipment inspection contract to the Swiss firm Societe Generale de Surveillance. Both were fined \$8.6m and jailed for five years. While Mr Zardari was already in jail awaiting trial on other cases, in its ruling in 2001 the Supreme Court found a string of complaints against the judge's handling of the case and noted that "bias is floating on the surface of the record." The judgement was over turned in an explosive 55-page ruling handed down by Pakistan's Supreme Court in February 2001, where one of the country's most senior judges has been singled out as being clearly biased in his handling of the case that judge no other, but was Justice Malik Muhammad Qayyum. With the release of the court's full ruling, pressure mounted on the judge to resign and whilst the military regime was considering filing a legal action to force the judge out of office, he resigned. In the judgement SC said "We are convinced that the trial in this case was not fair and on account of bias of the Ehtesab Bench (Pakistan's anti-corruption courts) the trial of the appellants stands vitiated," it said.

The court found Justice Qayyum and his wife had applied for diplomatic passports on April 17, 1998 after taking up the case. Diplomatic passports are not usually issued to judges and the foreign ministry opposed the application. Then on April 27

Justice Qayyum issued an order freezing the properties and assets of Ms Bhutto and Mr Zardari. Three days later the judge and his wife were granted diplomatic passports by then Govt. The supreme court said that this showed the judge had "acquired a personal interest" in the case and that there was "close liaison" between the judge, Saifur Rehman, the minister in charge of the anti-corruption bureau, and Mr Sharif himself. It also said that the judge had ignored the 10 other accused in the trial and rushed the hearing. The ruling said that Zardari Benazir's husband was not given the chance to recall witnesses for cross-examination and the defence had been allowed to call only one witness and the Supreme Court noted that the verdict was written and dated April 14, one day before the trial actually ended. At the trial defence lawyers at the appeal hearing had also handed in evidence of taped conversations, which appeared to show the then law minister, Khalid Anwar, Mr Rehman and the judge discussing the case and the imminent verdict. "Give them full dose," Mr Rehman told the judge. Prosecutors said the tapes were fake and the Supreme Court, perhaps wary of the political fallout, said that there was already enough evidence of bias in the case and therefore no need to look at the tapes. Ms Bhutto had left Pakistan shortly before the verdict and has never returned and now she is trying to return this year to commence her efforts to regain her old position.

Qayyum who also professed not to come against Chief Justice in the current reference of 9 March 2007 and met then non functional Chief Justice, and later he was filed was one of main legal eagles fighting to prove the Presidential side of the case but was unsuccessful. He was part of the same legal team upon whose advice The President must have filed affidavits of his en to rouge alleging wily nilly in the Supreme Court.

And now his appointment under Article 100 of the Constitution of Pakistan 1973 is questionable if we see the article and compare whether Justice Qayyum fits the criteria. Article 100 says as following, **“100. Attorney-General for Pakistan.**

(1) The President shall appoint a person, being a person qualified to be appointed a Judge of the Supreme Court, to be the Attorney-General for Pakistan.

(2) The Attorney-General shall hold office during the pleasure of the President.

(3) It shall be the duty of the Attorney-General to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character as may be referred or assigned to him by the Federal Government, and in

the performance of his duties he shall have the right of audience in all courts and tribunals in Pakistan.

(4) The Attorney-General may, by writing under his hand addressed to the President, resign his office”.

First of all once a judge was considered ‘bias’ in a SC judgement, can he truly be eligible to be Attorney General under Art.100(1) as it requires him to be ‘qualified to be appointed a Judge of the Supreme Court.’ To me, if he resigned after judgement of SC, its difficult to meet that requirement as the judgement questioned his conduct whether he would ever have been elevated to Supreme Court after the judgement let alone referred to Supreme Judicial Council.

Secondly, under Art 100(3) ‘he shall have the right of audience in all courts and tribunals in Pakistan’ whereas as former Judge of the Lahore High Court traditionally he may not be able to appear in front of Lahore High Court bench thus making him a dysfunctional attorney general. Can he truly represent and advise the Govt when he will be customary required not to appear before Lahore high Court, where he was a former colleague of those judges. Though he can send his deputies but that still does not take the sting out of the argument.

And finally comes the petition number 21 of 2007 of the Chief Justice Iftikhar Mohammed Choudhary where The Chief Justice resorted to higher courts and petitioned for justice in his own court and on 20th July, Supreme Court bench of 13 top judges quashed the reference and restored the Chief Justice to his old position. Unfortunately, former judge Mr. Justice Qayyum was attorney of the losing side. Here comes the bias issue again. If Chief Justice is taking suo-moto actions normally attorney general will be the first to attend, appear and represent the Govt. Any thing goes in favour is fine but anything goes against will be made an issue and bias will emerge as a 'Jinni out of bottle.', if Justice Qayyum is there.

Under the circumstances his appointment is another step towards leading the bar and bench towards deadlock and critics questions the wisdom of this appointment when there are hundreds of established and competent lawyers in the market available to fill the vacancy. Secondly it also raises sincerity of the military ruler about his claims to see old relations back with Chief Justice and the possible retaliation of establishment whether to accept the judgement of Supreme Court whole heartedly. Why in the black judgements, black references, and black appointments only one name after Sharif Uddin Pirzada emerges in govt circles. One must worry about future as to how many times both parties will avoid the deadlock in court and

how many times bias will emerge as an issue. Rather than rolling the heads, General Musharaf is resorting to ruling the heads, and one worries that who will lose in the end. Pakistan's loss will be dearly regretted in the end, lets hope and pray that common sense prevails in the end.

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Chapter 2

Articles on Public Interest Matters

‘Women Protection Bill is a ‘Good for nothing’ exercise at a wrong time, and is an eye wash’

Recent passing of the Women Protection Bill from the lower house of the Parliament has started a new debate in Pakistan. This bill which has given message of protection for women as well as has sparked an Islamic and non Islamic debate on the contents quite to the contrary to what the reality is? We have not yet forgotten the effect of ‘Danish cartoons’ and here come an other jolt in the form of criticism right to the top on our ‘Haddood laws’ which is untimely, un thoughtful and very callous exercise and above all it does not take into account Muslim sensitivities at this crucial time within which we are going through when the war is at our door front.

WPB seems a tester to initiate a debate that ‘Haddood Laws’ and punishments are ‘nauzubillah’ unworkable and it will lead to ignite a bigger debate on issues like, Drinking Alcohol, Saudi Laws, Pardah, arrange marriages, and above all blasphemy laws ‘versus’ freedom of expression. Super powers & think tanks will be finding an excuse to either declare states ‘non tolerant’ if public protests in the country on these irrelevant issues or finding an excuse to attack them considering them a category of state and people who wishes to bring Islamic revolution and are a threat to world peace, both situations are fatal for Muslims and in particular Pakistanis.

This is truly starting a dividing line and alas we are not united as one nation as well as not mindful of the gravity of the situation. No civilian rule promotes fundamentalism and or terrorism. Pakistan can never be Turkey or Egypt as envisaged by our so called, self imposed rulers and these efforts will weaken the moderate and middle class Muslims further which will have dangerous repercussions. Pakistan is an ideological state and is a thorn in the eyes of West and we all must protect this from all dangers and sooner the better. I am still of the view as have advocated for years that, ‘Rule of law’ has its own price and at this moment Pakistan desperately needs a ruler who can make rule of law a distinctive feature of his governance and initiate a ruthless department building process as well as accountability which include along with others ‘judiciary’ and ‘military’ as **‘all citizens are equal in the eyes of law’** and the rulers at least intend to eradicate all the evils in civil society and brings a reform package for the dying middle class and poorer and ensure justice at the door step of common man.

Justice delayed is justice denied and Justice should be seen to be done at least in an Islamic Society, in Pakistan we are 50 years behind in giving justice to nation and have learnt nothing from our past and are not ashamed of our glorious heritage. Only fair, faster and firmer justice can ensure that no one dares to breach the core essence of Pakistan’s constitution.

We need a strong system and reliance of that system and continuity where no institution start waiting for its term but institution starts acting to protect the system of Parliamentary Democracy. Pakistani common man still is ready for sacrifice and can live in poverty, restlessness, without food, hygiene or modern facilities but they can not live in an unjust society where might is right is applied as a principle and incident like Bajaur happens on a whole scale where 80 people dies and no one knows who killed them. Islamic teaching tells that society can survive in cruelty but not in injustice unless people get their basic rights as per right, democracy can not flourish in Pakistan, as we desperately need a social reform package if we are to survive as nation, otherwise we will be brought down and limited to a multi national companies & mafia interest. True problem in Pakistan is rule of law, education, social reforms and justice. Time is ripe that Judiciary gets its teeth out and do justice with common man.

WPB is one of the tricks of division and these tricks are to deviate nations attention of what could not be delivered and to give them a dream unattainable. Women needs education and empowerment, very rarely ever, a rape case was decided in completeness under 'Haddood laws' in Pakistan, simply because, the basic requirement of 4 witness wasn't met, therefore, courts almost in all such cases punished rapist under Criminal Procedure Code of Pakistan, the other venomous propaganda

that victim of rape (women) gets into trouble at the hands of police because of influence and money used by big people, have some truth in it, but this highhandedness one observes in every walk of life in Pakistan and you name it and it is there. So in short, the answer to this propaganda is reforming police powers by completely doing away with their ingrained practice of misusing powers in return for money and not making drastic changes in the law itself. Ideally, police can be barred from imprisoning any women until court decision and there must be presumption in favour of release of women out of custody on bail on conditions with or without sureties and in rare circumstances they are detained. They must only be imprisoned after having been sentenced. I feel this is an illusion and an eye wash, if the current ruler(s) were ever serious they wouldn't have waited for 7 years to bring this only change to please the commoners and western world.

I will only quote one sentence from Charles Cannedy's book, *'The Status of women in Pakistan in Islamization at P.74, where he says, "women fearing conviction under section 10(2) frequently bring charges of rape under 10(3) against their alleged partners. The FSC finding no circumstantial evidence to support the latter charge, convict the male accused under section 10(2)—the women is exonerated for any wrong doing due to reasonable doubt rule"* The current ratio of convictions tell the whole story as to how many women have been

sentenced under ‘Haddood laws’, its police powers which needs to be bridled not to change laws on the whole scale basis thus wasting nation’s time and money. Its time that we get down to true business which is taking off the uniform and hold free, fair and impartial elections under judiciary.

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‘Reformed Police Need of the Hour’

I saw that picture too of busting a young boy at Islamabad police’s hands and thought that it is only possible in Pakistan first you keep somebody’s father in unlawful detention without involving court and if someone by mistake cries then he faces our police force in our ‘might is right’ culture.

These unbridled police powers and ruler’s silence on the brutalities which we are witnessing now a days in Pakistan remind us not only the slogan upon which modern police force of western world works and our force was established i.e ‘police ka hey kaam madad aap ki (duty of police is public service) which has become a thing of the past but also it is making holes in the false claims of government machinery of the rule of law, public order and public service. I have read statements on all sides calling our people ‘fundamentalist’ I feel if some one is hard liner in our society that’s our police force and our fundamental job must be as citizens of Pakistan to demand for whole sale reforms in this institution along with judicial reforms.

Our police force has forced me to say and cry out loud that it gives a horrific picture seeing a young child Mohammed Ben Masood ‘inhumanly treated ‘for raising his concerns for his missing father who has not returned home and this ‘freedom

walk' was freely brutalized by our enlightened and moderate governments Police force who is now armed with new Police Order Act which seems to 'allow them to take people's clothes off' too if they protest. This has added laurels to our outgoing military ruler who is due for his election in November 2007.

We always cry for equality, good treatment and our rights any where we go. European Convention on Human Rights also arms the general public at least here in west against "torture or inhuman or degrading treatment or punishment." What I see in that picture is rightly amount to 'inhuman treatment' public humiliation is visible from the picture what law prohibits the authorities to do, 'heavy handedness' in general public matters. It is very important to create political consensus on the issue of de-politicization of police as without the timely and correct implementation of laws, rules and judgments given by the judiciary to the police, all the laws and rules will be meaningless. Political class must re-evaluate the function of the police and make it absolutely independent so that it becomes 'a true public service force' and combat what harms comes public's way. This will make the police force more professional, incorruptible and to ensure that they act in the cause of justice.

I welcome Political Quarters pledge to reform judiciary and request them to include Police force too as without proper

Professional Police Force, the notion of nation's rights must be given as rights not favours and I am afraid those rights can not be delivered as rights unless Police act as public servants impartially. When current ruler came to power, he promised to bring about true democracy and rule of law. His claims of bringing rule of law to the nation can be seen with naked eye and we do not need special glasses and his good governance has fallen on already poverty ridden lower and middle classes who are shaken and Pakistani assets are on 'loot sale' only Supreme Court sometimes grab them back from the vultures like they did in 'steel mills case.

Land mafia, sugar and cement crisis, oil price hike, steel mill reference, stock exchange crashes, and above all his Nabbed Ministers are the legacy of current regime and blood of 'Bajaur' victims raising a lot of questions. A common man who is so frightened and sick of political slogans is thirsty of clean water, free education, cheaper medicine which is turning into a dream in this lawless land of corporate interests.

General Musharaf bitterly failed in achieving what he himself offered to the whole nation in his live television broadcast. He similarly states in his autobiography, "we have done more than any other country to capture and kill members of al Qaeda and to destroy its infrastructure in our cities and mountains." He

continues, "We have captured 689 [suspected al-Qaeda members] and handed over 369 to the United States. We have earned bounties totalling millions of dollars. Those who habitually accuse us of 'not doing enough' in the war on terror should simply ask the CIA how much prize money it has paid to the government of Pakistan".

While offering cash rewards for the capture of suspected criminals does not in itself violate international human rights standards, offering large amounts of money for the capture of people matching a vague and broadly defined profile rather than for specific individuals who can be identified, opens the door to opportunists and bounty hunters to claim the reward for the arrest of people without reasonable grounds that they committed a crime. In Pakistan, the practice has encouraged arbitrary detention and enforced disappearance.

We did not see any role of judiciary in the arrest, detention and transfers of Pakistani Citizen as well as foreigners. The speed of the transfer does not allow for meaningful consultation with the country of origin. Moreover, the quick transfer to US custody of this and other detainees indicates that the procedures followed are in breach of Pakistan's extradition law and that the principle of *non-refoulement*, which prohibits the transfer of detainees to a country where they risk serious human rights violations, is not followed. The court fit in all these proceedings unless they take *suo moto* action which they did on this

occasion. When he himself is judge and jury to decide who should be arrested, where should he be kept or sent negating the will of people and without judicial oversight thus denying individual's basic rights given to them by the Constitution as well as international law.

On 8 January 2007 Supreme Court of Pakistan criticised as insufficient efforts by authorities to trace at least 16 people believed to be held by intelligence agencies for suspected links with militants. We need a civil system of governance with strong institutions full of professionalism. Federation and future of Pakistan lies with democracy which is not possible unless and until free elections are held under independent care taker set up as only true civil rule where people are accountable for their conduct can save this shattered nation who is in dire need of 'nationalism.' If one wishes to save the country then one has to sacrifice the interest of one institution alone and make 'Pakistan' a priority. I think its time that 'one man one vote' principle and an in born right of the people is restored and establishment lay back and let the people decide what they want, and who they want and democracy in its true form is allowed to return as a system of governance as Abraham Lincoln said 'Government of the people, for the people and by the people.' This is not possible by current rulers who are on 'hit and run' and have shaken nation's confidence.

My commiseration to Mohammed Masood that I could not save him from that inhuman treatment visible in the picture, however my strong advice to him is that he should curse his current day rulers if he can not 'take arms against the sea of trouble' like Hamlet of Shakespeare so that on the day of judgment they are answerable for their deeds. This is 'apathy' a worst kind of hopelessness and May God save Pakistan.

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‘For Sale’

I heard the news with great sympathy and contempt emanating from rural Punjab that a poverty ridden father who could not afford the upbringing of his children put a ‘for sale’ board outside his house to sell his children. If we for a split second try to visualise the apathy with which this act may have been done, the life seems miserable and the whole nation’s condition becomes obvious with which our rulers in bullet proof cars are totally out of touch with the nation’s pulse. That’s the quagmire in which Pakistan is engulfed now a day.

Nexus of our judges with Generals have ruined the future of democracy in Pakistan. Nepotism, bribery, lawlessness, unmeritorious appointments and lack of respect of law in an unjust society has made life impossible for lay Pakistanis who are looking towards a ‘messiah’ for their salvation. President Musharraf who apparently came for their rescue has bitterly failed in their salvation and could not bring about true democracy and rule of law. His 7 points objective statement itself has become a laughingstock as the scandals have wiped the resolution as virus destroys the data. His referendum & 2002 elections are an epitome of his claims to hold fair elections in future and his reluctance to appear before Parliament shows his trust on his own hand picked. Though at the end of 5th year of Parliament his Ministers are still training

their fellow graduate members of Parliament how to behave when and if President ever gives the honour to address them.

Government which has land mafia, sugar and cement crisis, oil price hike, Steel Mill Judgement, continuous stock exchange crash(es), Nabbed' ministers and Bajaur and Dama Dola killings in their baggage has hardly come to grip with the real problems. Alas democracy & political promotion has never gone that low in Pakistan's history, that's the ingenuity of the current day political landscape where even one person can affect the whole system any day, and could be any time.

In order to continue this trail of unlawful rule, judiciary has weakened further and Chief Justice was made to go home without reason. Ordering oath under PCO hit the nail aright and judiciary lost its teeth as an institution. Rulers claim of accountability & cheaper justice at the door step of common man was made to sacrifice at the altar of personal gains. Now it is the face saving exercise at both ends. This nexus of Judges and Generals have ruined the fate of a nation which is strong in character and rich in culture, their faith untarnished and their history to be proud of. A nation who had heritage of Imam Hussain's sacrifice & a lesson of not to bow before a tyrant leader and justice of Umar Ben Khatab who would ensure that even a dog does not sleep hungry on the bank of the river of Farat whilst he is caliph. With this heritage and history our

citizens are selling their kids, dying of hunger, unemployment, lawlessness and killings of thousands of our countrymen and we are acting as by standards then either we are fools ourselves of ignoring the true situation or some one else is fooling the nation with their claim to have earned billions in their so called 'War of Terror'. On the name of enlightened moderation, we participated in someone else's war and became a direct victim of reprisals. Our soldiers are dying of counter attacks as witnessed in 'Dargai' which is rare in Pakistan's history at or around Durand line. Our rulers put 'for sale' label on our professional army and made them to kill our own in tribal areas, the army who had the potential of not only defending our country well but can nail if any tyrant ruler attacks it in any given situation. It is now killing its own tribal(s) who were considered a backbone of Pakistan as was once said by the founder of Pakistan. We neither learnt from Afghan War nor we are sick of one way affair with United States and gave in on one phone call what nations gather in their whole life time. Self respect in fear of reprisals. That poor man whilst selling his kids did not realise that selling kids may not be that offensive however selling self respect and nation's honour may be a crime which could never be forgiven by the martyrs of this rich nation and the architect of the country 'Pakistan'.

Pakistan was made to allow the millions of Muslims of sub continent who pact with its founder to live with ease and

freedom and give a signal of a strong nation in character and modern in outlook to learn technology and compete with his neighbours and live freely. Lawlessness where their own Ministers are not safe, Judges are struck whilst hearing court cases, and day to day law an order situation gives a bleak picture of our civil government agencies control. Whilst all this is happening in real, our chief is busy taking actions suo moto against 'kite flying' and nation is being traumatised by initiating a debate to legalise 'alcohol' and 'Women protection Bill.' Women have always been well protected by the constitution and Islamic Injunctions however practical difficulties and unbridled police powers who always work in conjunction and backing of local politicians have forced the gang rape victims to come on television and cry for help. That's the true picture of rule of law in General Musharaf's Pakistan.

Nation is demanding justice, justice and justice alone. This nexus of Generals and Judges must be broken & buried forever and it is not acceptable where our judiciary is a silent spectator on the most crucial questions of conflict with our constitution and their decisions are required in time to avoid a further deadlock. Their rulings on Article 6 and its scope, COAS to be a President, Independent election Commissioner, Care taker set up, and disqualification of the corrupt and qualifications of popular amongst the masses will pave the way towards true democracy. We always take pride to compete with India in

words, its time that our judiciary compete with them in action(s). Their judges are neither angels nor were brought out of country, but still are playing the role of a referee independently, freely, without fear of PCO and all the authorities respect it.

Political class need to unite to demand fair elections in Pakistan and must continue up right struggle for free and fair elections under impartial care taker set up, ideally under judges. That one demand and struggle can keep the nation away from yet an other disaster and believe me, we are very poor in learning lessons from our short history.

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‘Free Ride at the Cost of Pakistan and Public Purse’

In Pakistan establishment always nip the voice of descent which they successfully did when Nawaz Sharif landed at Islamabad on 10 September and his party's main leaders and supporters were under arrest and Islamabad was sealed despite clear court orders and we will keep hearing contempt proceedings for weeks to come, but the damage is done. On the other side, here comes all time hated by the General the so called corrupt Ms. Bhutto entering the arena with free hand, full protocol, bullet proof truck, and her billions and change intact and her militia around her with support of the military dictator entering the political landmine with pomp and show. Her supporters are allowed to travel from Karachi to Peshawar and i believe some are travelling for days without any policemen noticing their journey. People's party despite their politics and style of anti establishment gave in at the eleventh hour for a little relief in lieu of ousting a military dictator preferred to join hands with him. Some democrats and hard-line supporter of PPP are critical and questioning her wheeling dealing and some are leaving the party and others doubt her slogan 'with Benazir comes employment' to the one that 'with Benazir goes what's left in Pakistan'. Most of her supporters are jubilant as their leader is amongst them.

Corruption of billions from public purse is a matter of public interest and of great importance and at best will be decided by 20th July born new courts however death of Mir Murtaza Bhutto is quite an other. Fatima Bhutto, daughter of the martyred in her latest article in the News on 20 September 2007 questions the impropriety of PPP govt in that killing when she says, "Curiosity impels people to ask about the not-so hidden hand, the highest level of government.' The government of no other but that of her aunt BeNazir. Its not a matter of politically motivated stealing of a goat or a buffalo or commission allegations of polish tractors, or French spare parts repairs or oil or food programme of UN or money laundering its a pure criminal investigation for which a case is pending for years and that little girl seeks justice, and i think Be Nazir must ensure to bring those to accounts who are in power or at least re open her father's case and deliver justice to his soul.

I think one must be happy that twice premier is allowed to enter politics as desired and deserved however the style with which such deal is negotiated is bit shameful. Her attempts to seek pardon from corruption via NRO ordinance than courts and her secret dialogue to keep Nawaz Sharif a one time arch rival out of electioneering process is not democratic whereas they both had already came close to some sort of 'political reforms package' under 'Charter of Democracy'. BBC in their online survey exposed that over 82% questions the validity of free

polls if Sharifs are kept outside the arena and on the 8th anniversary International Republican Institute in their fresh polls between 29 August to 13 September with 4000 people declared Sharifs as the highest in rating with 36% with Benazir trailing with 28% and Military man on the bottom with 21%

Whilst democrats welcome her return to play her due role however Pakistan's establishment knows it better that partnership with PPP with crippled opposition can be very dangerous. It can act as a double edge sword and only restoring two party system in reality as was before 12 Oct 99 is the ultimate solution and key to the security of the system guaranteeing protection to the state. Q League with divided vote with N League will suffer heavily at the hands of PPP, in fact PPP will destroy them if allowed to canvass single handedly and maturity desires the return of other exiled leaders to ensure free, fair and impartial elections to allow the people to elect and reject the leaders. This fair dual is also necessary to have a check and balance to preserve serenity and common sense. PPP in power with military dictator will not be able to deliver as per claims and assessments as such govt will be short lived and could be toppled with any uneven incident whether it is an incident like 9/11 or sudden death of any stalwart and then the situation will desire a rematch calling all the players again but at that juncture the loss will be of Pakistan and as long liberals are allowed to canvass against conservatives will keep the

hardliners at arms way but a match between pro western vs. pro madrassha clans could be fatal for the state.

Mullah is not the root cause of the actual problem, lack of political will is, and the direct diagnosis of such extremism is vacuum and the absence of political leadership which has roots in the masses on conservative front which use to keep middle class mobile and up right to check and out number the militant out fits. If you remove conservative leadership, ultimately you are left with hardliners whether they are Lal Masjid style leadership, or Tribals who are fighting in northern areas who are ready to interpret Islam to their own choosing though not shared by commoners but have a frightening effect on masses and create a terror thus spoiling the balance.

I feel time is up and rather than opening one door channel of secret and open negotiations with a,b,c parties and damaging the system further, military leader must act as a Spartan and initiate open and public discussion in the supreme national interest with all political parties at a round table ensuring unconditional presence of all exiled leaders to discuss how an exit can be practically made possible and how a fair and transparent elections can be held in Pakistan. Those consultations may discuss the mechanism of inducting an independent and reliable care taker set up possibly judges along with powerful election commissioner who will impartially hold

elections which appears to be and are in fact transparent and fair. He also needs consultation with all parties how the independence of judiciary can be secured as his actions speak louder than his claims that he believes in justice and fair play. Only a fair and independent judiciary can guarantee holding of a fair election(s) in Pakistan.

These suggested actions are not imminent and may not happen at all as our leadership lack political will and have no roots as well as wisdom which needs to solve the crisis they are in and they can chant national reconciliation but when it comes to crunch they speak with oppression and operations where our soldiers are at war with our own people and some of them are kidnapped, on 12th May and 10th of September Govt sealed off Karachi and Islamabad for Chief Justice and Sharifs, however the same city is open on 18th Oct for one and only. Though Imran Khan is considered worthy of expulsion orders each time he attempts to visit Karachi. These dual policies needs to be addressed before national reconciliation is talked about and in all we see that 160 million people are somewhere missing as they are not party to any negotiations. How long will the regime run this government with these discriminatory tactics, they must come up with the task as Article 5 of the Constitution binds them that loyalty to the state is their basic duty and obedience to the constitution and law is inviolable and they need to ask themselves whether those duties are discharged properly , fairly

and indiscriminately. Sometimes they need to get out of the bullet proof cars and go to local market and see with their eyes and listen to the people how they view their performance.

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‘Extreme situations require extreme decisions in the interest of Pakistan’

On 3rd November 2007 yet again we are slowly drifting into an other martial law at the 60th birth year of Pakistan which is not only unfortunate but devastating for the lay people of Pakistan who are confronted with not only crossroads every other month, year or a decade but are sick of observing black days almost every month whether its 9th of March, 12th of May, 10th of September or 12th of October. We do not have to announce but Pakistan as a state is in yet another crisis and thank goodness the armed forces as a unit are intact otherwise the country will be truly under attack from all around due to the regional situation. Recent promulgation of emergency cum martial law situation by the Musharraf regime could have been avoided unless both sides had shown restraints and tolerance, instead both were taken intentionally to a closed cul de sac dead end where they reached to a point of no return and as a result alas nation is observing an other extreme measure, media black out, detention of lawyers, judges and human rights activists and constitution is held in abeyance. The ineffective fat cat legal advisors of state machinery are also to be blamed for this onslaught on state which was in the offing since the appointment of all inclusive Attorney General whose name is mentioned in almost every legal crisis even as a lawyer, judge

and now as an attorney-general. Judiciary also took a little longer to hear the all time important case of General Musharraf's last exit from military to civilian outfit and unnerved the confidence of a man who was still in uniform carrying the support of executive machinery, law enforcement agencies and above all armed forces who are duty bound to their discipline which is their core essence.

Looking back, on 9 March this year, when Pakistan's military ruler, General Pervez Musharraf, tried to subdue the Chief Justice, Iftikhar Mohammed Chaudhry, by suspending him from judicial work, incarcerating him and making him incommunicado, along with his family, without counsel. That was the fault of presidential legal hawks too. The legal fraternity stood up for the Chief Justice and that single judge conquered the hearts and minds of the Pakistani people. Even *The Times*, in an editorial entitled 'Judicial Error' in March, said General Musharraf should reinstate the judge. 'Good generals know when to retreat,' it declared. I wrote to General Musharraf on 12th March, arguing that the procedure adopted gave rise to serious questions of impropriety and it is questionable of whether the Chief Justice could ever have a fair hearing. The Chief Justice resorted to the courts and eventually petitioned for justice in his own court. On 20 July, a Supreme Court bench of 13 judges quashed the decision and restored the

Chief Justice to his old position. Other recent events in Pakistan, including the 12 May massacre in Karachi when the Chief Justice was due to address the Karachi Bar Association, military operations at the Red Mosque in Islamabad, and a sharp increase in suicide attacks, prompt serious questions of the ever-growing threat of radicalisation in Pakistani society and the ever-widening gulf between liberals and theologians, trends which can also be seen in the UK. I believe simple democracy with justice can solve half of the problems in Pakistan. In the whole power struggle, the common man is suffering and middle class conservatives are losing ground.

Hence, now the emergency on 3rd November which have far reaching serious implications for freedom of Pakistanis as well as serious repercussions for the Federation and State of Pakistan. We have heard on media and read in papers the recent developments though majority of Pakistanis are not privy to this luxury of information but a million dollar question for all is how we can get out of this mess. I can only think of 7 points at the outset as when you are attacked with nerve gas and are asked to solve a legal question, its difficult to pick right solutions when almost most of the top brain of the country is in detention and ‘martial law’ is akin to a ‘nerve gas’ attack for a human rights lawyer like myself. If ‘Pakistan really is first’ then ruler must consider the following observations:

1) I think state brain including 3 last army chiefs, 3 last intelligence chiefs, 3 last Presidents of Pakistan including chief executive, all corpse commanders, all top party chiefs and President Musharraf could have or even now must convene a meeting with the current Chief Justice as well as all 17 members Apex Court and abreast them of the current situation. Try to work out and negotiate before it's too late the stage 3 of military exit from civil administration peacefully. Allow an honourable way for judges to allow the announcement of Presidential Election results and they may kindly be asked to adjourn the judicial case regarding filing nominations until new Parliament is formed who decides on the subject and President takes a confidence vote from new Parliament within 30 days of the formation of new Parliament. In presidential election case, there must be no more further hearings and the bench should ask both parties to submit further arguments within further 7 days in writing and the decision should be reserved and adjourned till a later date. The result of that case should be given once new Parliament is formed. If that's not done sooner than civil unrest may bring us to the stage 2 of the coup which may not leave things in control of the same General which will be devastating for the state of Pakistan and its interest keeping the global view of the region where our soldiers are kidnapped, there is unrest in Baluchistan, and Swat, and there are 'no go'

areas in Karachi for certain politicians and we are being trapped and are driven towards regionalism.

2) It may be difficult to take CJ back to 8th of March position but allow a workable constitutional way to keep Chief Justice without disturbing the full mechanism of judiciary. All other judges must be asked to continue as normal without the need of any PCO as they are the same judges who has given valid decisions in the past so they must not be harmed or harassed in the interest of saving judiciary. The top brain of the country must be kept intact rather than ignoring their effectiveness. I think there is no one more loyal to state than a top judge of the state. Top brass of judiciary is an asset of state too. Civil society will not sit still and loss will be all of Pakistan if the situation gets out of hand from here onwards which is more likely if commonsense is not preached and wisdom is not practised.

3) Consider issuing an Ordinance and later Parliament may consider amending the way suo-moto notices are taken and procedural applications of it as to how best to use this constitutional facility. Suo-moto actions must be limited to a report of executive on each action within 90 days and only then a direction is given after a 90 days period is lapsed, and all officers must be allowed to attend court through their lawyers. It is best if suo-moto actions are referred to respective higher

courts for action and report within 6 months of the referring of the matter to avoid unnecessary controversy regarding Apex court and in order to keeping appeal rights against those orders intact to make it procedurally fair to all.

4) I think extreme measures can not be tackled with a derailed political process. There must be a full scale revival of a credible political process and as the current parliament comes to an end on 15th of November therefore a broad band national reconciliation must be initiated genuinely. National Govt is formed as an interim care taker set up including Nawaz Sharif, Be Nazir Bhutto, Fazal Rehman, Qazi Hussain Ahmed, Imran Khan, Shujat Hussain, Altaf Hussain, Justice Wajihuddin Ahmed, Asfand Yar Wali, and Mehmood Khan Achakzai and they hold a broad band national reconciliation and take recommendation of all the stake holders as to how a credible election can take place. A date is announced for fresh general elections after that consultation and its recommendations. Provincial care taker set ups and new chief election commissioner is appointed with consultation of all parties to hold free and fair elections forthwith not later then 12 months.

5) All state apprentice are bound to work for the best interest of Pakistan and Article 5 is very clear about it, If the rulers lack legitimacy or are advised to take extra constitutional measures,

the stake and price of such actions will be very high and the payer will be Pakistan as a state and it will also make the military ruler subject to stricter international scrutiny and national interest may have to be compromised at some stage as was the situation post 9/11 and only a legitimate set up consisting of a political force with public confidence and military strength behind can address the extreme situation Pakistan is in therefore as a policy extreme supra constitution measures must be avoided.

6) Finally, Western forces will be happy to negotiate with a military man without legitimacy instead of elected force as it will be difficult to get what they want if a set up is politically elected, therefore to avoid receiving a heavy shopping list like we did in the past 9/11 from Richard Armitage as was outlined in the book of the President 'in the Line of Fire', ruler must consider at all times a viable credible set up which is in no means lack legitimacy.

7) Freedom of all citizens enshrined in the Constitution must be restored along with the 1973 Constitution as we are to win the fight of hearts and minds and not to divert people to apathy and hopelessness. Ensure free press and electronic media freedom as in Pakistan education rate is so low that only this sort of media revolution can assist to form public opinion to

vote in free polls to rid the politics of the dirty sleazy and feudal mind set, freedom of movement as well as intellectual stimulation must be preserved and ensured which is a pre requisite to national development.

I think his charge sheet that judiciary was a hindrance in curbing extremism in wrong in law, and policy and international practice. Due process of law and fair trial are basic ingredients in any free society. Even in Britain, British House of Lords in an unprecedented ruling against the government's detention of nine foreign nationals without trial on grounds of national security created a constitutional crisis, which further exposed the abrogation drive of democratic rights under the guise of the "war on terror". On December 16, 2004 the House of Lords ruled by an eight to one majority in favour of an appeal by the Arab men that their indefinite detention without charge breached human rights Art. 5 of ECHR. Seventeen men were been held under the Anti-Terrorism, Crime and Security Act 2001 rushed through by the Blair government in the wake of the 9/11 attack on New York. Arguing that potential terror attacks constituted a "public emergency threatening the life of the nation," the government opted out of the section of the European Convention on Human Rights governing the right to liberty and a fair trial. However no one blamed court for spreading extremism and no emergency was imposed in UK

though they are amongst countries originating the philosophy of ‘war on terror’ so General Musharraf’s plea is weak when he blames judges for increasing the radicalisation though its clear that his presidential election challenge before the Apex Court was a biggest threat to his rule and could have gone either way, and that seems the ultimate reason of such extra ordinary promulgation of an order.

In his speech General Musharraf quoted Abraham Lincoln of US however he forgot to mention Churchill who emphasised the importance of independent judiciary which was dispensing justice even during World War II as he said that if the courts of Great Britain are dispensing justice to a common man the issues of war can be best tackled with by the politicians and same Great Britain despite not having a written constitution and the like of Article 6 of constitution 1973 of Pakistan in their framework hanged their General Cromwell who attempted to abrogate their unwritten constitution and democratic values and gave him punishment after his death. We must learn how people achieved their freedom and liberties and must promote it rather than curbing it and delaying freedom to its citizens by saying, time is not yet ripe is not justified as there is never a right time and right people available in democracy, you have to live and let live with one’s who are available and I feel still there is time to reinitiate that drive for true democracy in Pakistan.

There are no two opinions that terrorism is a common menace and it can be best fought with wisdom and political reconciliation by winning the fight of hearts and minds and by defusing hard line approach with reforms package, taking masses with that drive and alienating hard liners. General Musharraf's latest acts will further divide the civil society and true representation of people will be missing and these acts will further damage the cause. The west must play its role to ensure free and fair elections in Pakistan under a credible caretaker, together with a powerful election commissioner and independent monitors. The sooner the nuclear-armed Pakistan returns to normality, the better it will be for the rest of the world. The fear is that radicalization may increase while the military remains in civilian setup, as it has to compromise with hardliners to make up for its lack of legitimacy. Only a civilian set-up can absorb these radical ideas, by addressing political issues through dialogue and stopping them from multiplying. As a frontline state in the 'War against terror', Pakistan is a key country that needs the attention of the west as well as its own 'military rulers'. Pakistan's leaders are now at a crossroad. The western world, along with Pakistani political forces, lawyers, judges, civil society and media have a very important role to play to return Pakistan a country akin to a 'dream come true' to a democracy where the rule of law, rather than military rule, holds sway. Pakistani lawyers abroad join their brethren

lawyers in their struggle for rule of law, justice and supremacy of 1973 constitution in Pakistan.

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‘Sacrifice is in the air’

Sacrifice spirit is in the air whilst Muslims of the World are celebrating Eid and remembering the episode of the prophet Ibrahim and the obedience of his son Ismail which is celebrated with the similar enthusiasm even after thousands of years. The month of December also entails the sacrifice of Jesus Christ who laid down his life in order to reduce the sufferings and miseries of his disciples and was nailed at a cross by his opponents in command and Jesus left a message of tolerance and forbearance which is remembered by over a billion Christians whilst they celebrate his birthday on Christmas day on the 25th December. There is an other sacrifice where around 70 members of a clan fight the tyrant of the time and sacrificed their lives in order to make a political point that people on right may be a little in numbers but wins in the end, no other than the sacrifice of the Imam Hussain a grandson of Prophet Muhammad (PBUH) who at no point allowed his family to come in the way of the drive to take his grandfather's religion Islam to the heights of glory. And with that sacrifice the martyrs are remembered with zeal and fervour whilst cursing the Yazeed as the oppressor. If we look around similar battles are on going in our surroundings, in our hearts and minds and in the streets all around, and this is the time that the message of those

sacrifices is remembered and the wisdom of those contributions is appreciated befittingly.

Have we learnt from the sacrifices made by those Prophets and good people as well as their families is noteworthy. Today's man is moving away from the morals and teachings of religion forgetting the lessons projected by those losses and sacrifices whether it is Jesus Christ, or Imam Hussain. Irony is that their followers who are in billions have yet to remember the goodness those episodes preach. 25th December is the time of quick reminder looking at the whole globe the message brought by those messengers of goodwill, peace and tranquillity to each other and man's rights and responsibilities above than their religious divisions. To Islamic faith your neighbour must not remain hungry whilst you are eating mouth full as well as the message of Christianity about sin of over eating (gluttony) and simplicity and tolerance. If we look around that message is fading away, people are dying every day of hunger in the neighbourhood of wealthy countries. Are we concerned that the distribution level of wealth is touching the highest of discriminatory levels and poor is getting poorer and rich is growing richer. In Iraq thousands have died so as in Afghanistan. Burmese are fighting for their basic rights where as Palestinians are at war with their powerful neighbours despite both believes in the basic human rights whether its Quran or Tenth Commandments. On one hand Hitler in this

century killed scores of innocent uninvolved and on the other hand modern day tyrants are searching their victims to slain them at the hands of their weapons and the message of sacrifice and tolerance of those is fading away in those gun shots, military build ups, and invasions.

To me, it's very easy to ruin a country with gun power however it is extremely difficult to rebuild that country into a peaceful progressive society. As the time of Eid is passing bye and Christmas is in the air I for once am remembering those sacrifices and those detained in Guantanamo Bay without legal advice and representations becoming a victim of torture or those innocent until proven guilty accused who are missing in Europe or Asia and are tortured on the name of War against Terror and the bleak picture of human rights in 21st century in Pakistan and the detained judges of Pakistan, the incarcerated lawyers and gagged media and missile attacks in northern front of the country which forces me to question the wisdom of today's rulers whether they have learnt any lesson from the struggles of the past for the right cause and its results. I further wish to highlight that the dual between good and bad is a never ending story but history remembers those who make an impact, at the time of conflict and try to preach commonsense and keep giving sermons of righteousness and hit the nail aright in order to secure harmony peace and happiness or keep their flags high of

their cause despite being in weaker minority against the might. Those who are on right can never be defeated and irony is only the historian decides who was at right by assessing from the scale of repentance afterwards looking at the support of masses, they receive.

This December when billions are remembering the sacrifices of Ibrahim, Hussain and Jesus Christ, we are right in demanding justice and fair play from the ancient civilisation flag bearers and from the modern super powers that not to forget those sacrifices of their ancestors for the right cause and their message of peace, goodwill for man kind and tolerance for others must preserved that message, which is far more grater than invading at will.

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Chapter 3

Articles related to Pakistan Politics

‘Exit’

In Pakistan military dictators come unchallenged but their departure is never scheduled, same is the case with General Pervez Musharraf who is in a fix as what to do next and election is drawing nearer. Their masters can never be their friends cried out loud General Ayub Khan, in his last days in his autobiography so did Zulfiqar Ali Bhutto in his famous speech in Parliament that conspiracies are being hatched against him. Great nations keep their national interest supreme and weaker nation's leaders their power . Pakistan a vibrant nation full of potential, talent has become a victim of a few whose vision has no boundaries and no respect for rule of law and justice. Alas the current ruler also could not do anything for the masses on a large scale and never commanded their support and always looked towards his masters as well as their constituency for maintaining power. The ruler must look back and see how many friends he lost and how many are left behind, one by one he is getting lonely.

Ariel exit is normally the only route available for those who came violating the popular mandate of the people as leaving peacefully is an option idealistic but rarely practical. News reports indicate desperate attempts of such ‘political exit’ carefully concentrated between military dictator and other political parties, on top of list is PPP. Those who believe in the

positive outcome of this relationship are living in 'Cuckoo's land' as there can be no sane agreement between a military ruler and popular political party without compromising rule of law and constitutional supremacy. These CBM's Confidence building measures merely can pave the way of exiled leader's peaceful return to Pakistan which is denied by force as Pakistanis are given their in born rights as favours not as a right, but partnership with an unpopular outgoing leadership is very tricky especially after judicial crisis of 9 March where they have self inflicted a wound which is not going to go away easily.

Pakistan's establishment knows it better that partnership with PPP with crippled opposition can be very dangerous. It can act as a double edge sword and only restoring two party systems in reality as was before 12 Oct 99 is the ultimate solution and key to the security of the system guaranteeing protection to the state. Q league with divided vote with N league will suffer heavily at the hands of PPP, in fact it will destroy them if allowed to canvass single headedly and maturity desires the return of other exiled leaders to ensure free, fair and impartial elections to allow the people to elect and reject the leaders. This fair dual is also necessary to have a check and balance to preserve serenity and common sense. PPP in power with military dictator will not be able to deliver as per claims and assessments are that such govt will be short lived and could be

toppled with any uneven incident whether it is an incident like 9/11 or sudden death of any stalwart and then the situation will desire a rematch calling all the players again but at that juncture, the loss will be of Pakistan.

Mullah is not the root cause of the actual problem, lack of political will is, and the direct diagnosis of such extremism is vacuum and the absence of political leadership which has roots in the masses on conservative front which use to keep middle class mobile and up right to check and out number the militant out fits. If you remove conservative leadership, ultimately you are left with Lal Masjid style leadership who are ready to interpret Islam to their own choosing though not shared by commoners but have a frightening effect on already weak government who fears of a political explosion all around, any time.

I feel time is up and rather than opening back door channels of secret negotiations with a,b,c parties and damaging the system further, military leader must act as Spartan and initiate open and public discussion in the supreme national interest with all political parties at a round table ensuring presence of all exiled leaders to discuss how an exit can be practically made possible and how a fair and transparent elections can be held in Pakistan. Those consultations may discuss the time table for lying off his

uniform before his elections, and mechanism of inducting an independent and reliable care taker set up possibly judges along with powerful election commissioner who will impartially hold elections. He also needs consultation with all parties how the independence of judiciary can be secured as his actions speak louder than his claims that he believes in justice and fair play.

Only a fair and independent judiciary can guarantee holding of a fair election(s) in Pakistan. These elections can't be held fairly if the head of judiciary is begging justice in his own court. What a picture the regime is showing the whole world of the state of play at judicial front, and the humiliation of masses over this issue is visible from their wider condemnation. These suggested actions are not imminent and may not happen at all as our leadership lack political will and have no roots as well as wisdom which needs to solve the crisis they are in and followers of Imam Hussain who are not a few applauded another 'NO' to the tyrant of its time and time is running fast.

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‘Leaderless Nation’

Pakistani nation amongst a few in the history of modern times who witnesses helplessly the character assassination and political demise of any potential rising leader at the hands of the dictators of its time without any judicial oversight . After the death of Barrister Jinnah, the nation felt that Liaqat Ali khan will take the mission forward but unfortunately he was shot in front of his own people.

Another popular leader emerged within a martial law and we saw the fate of Zulfikar Ali Bhuttoo whom western world called ‘Zulfi’ a man with a vision and passion for his country who not only inaugurated the idea of making this nation an atomic power but also signed to bring infrastructure as well as the man with know how to build our nuclear structure. He successfully advanced the country on the route to progress front nationally as well as on foreign front but when his wisdom and skills came nearer to serve Pakistan at the highest level, he was sent to gallows and ‘was made an example’ as he himself warned. His death was a fatal blow to the federation of Pakistan. His daughter could never come nearer to delivery of his father’s famous and politically romantic slogan of ‘roti, kapra aur makan’ (bread, clothes and accommodation) despite having two chances of crippled administration.

Then came a businessman who aspired to translate this declining economy into a vibrant, powerful and progressive market and bridge in between hot waters and states of Asia and his first reign was called a way to turning this country a 'tiger of Asia' as written by a top magazine of that time. However his rule was toppled yet again by a powerful military dictator who came in power violating the article 6 of the Constitution of Pakistan 1973 which say as following, *'(1) Any person who abrogates or attempts or conspires to abrogate, subverts or attempts to conspire to subvert the Constitution, by use of force or show of force, or by other unconstitutional means, shall be guilty of high treason.'* Instead the military ruler sent Sharifs in exile and nation was again leaderless.

When popular leadership is politically assassinated then we are left without a voice. Pakistan is seriously suffering from a vacuum. Empty floor is occupied by scoundrels who can bargain on anything and have no morals and principles and no love for the country. Loot sale of the national assets is on. Ruling coalition does not carry the real voice of masses; military dictator is showing autocracy by detaining the creator of the national supreme arsenal, exiling the both political leaders who have roots in the masses, and bringing the top judge of the state on to their knees begging for justice. Its waste

of time to even think the treatment bestowed on the sitting chief justice of Pakistan, as that seems a common occurrence now.

One single breach of any constitution if tolerated leads to a chain of similar events which can never be curbed later. Pakistan is seriously a victim of lawless clan of a few who do not understand the language of law. Might is right is their motto, and oppression is their answer. In these circumstances democracy, free judiciary, political wise leadership, free media and accountability is a dream which may never come true.

Time has come that the makers of this country are looking towards the nation as well as the nation's dearest soldiers to find the key to the question as to why Pakistan was made.

Pakistan is a dream come true, a story of a nation who without having similar language, culture and geographical heritage decided to live peacefully at one platform. They won a 'statehood' as a result of a one man one vote rule and opted for this land called Pakistan and attempted to preserve their identity as well as their vision as an independent nation and their religious practices upon which they felt proud. That dream had a passionate leader, a barrister from London's Lincoln's Inn, Mr. Muhammad Ali Jinnah. In 1971 that dream had a fatal blow when a popular mandate upon which this country was made was denied to its people. Second blow collectively is a

collateral damage caused by frequent 'military coup de tat's. If its one successful coup then history negates it, if that act puts you on the real road to strength, but when it turns into a periodical habit then state organs and its leaders start loosing their grip and those who are sub ordinate to sovereign must pay heed to this trend which is damaging the core essence of a state and its institutions. Our political clan has not shown 'whiter than white' philosophy either and lust for money, greed for power and intolerance for others has damaged the original principle. Autocracy has not confined to one particular institution, and or party it has become a common phenomenon in our mind set. Time has come to change our course and call for a public accountability. This nation is not a private land of any one particular individual, group, class and or party. This land of pure is a shelter for all classes, cultures and safety zone for all languages and geographical heritage on top of that it has a scared role of leading and assisting the Muslim community of nations by preserving its own and be a contributory member of the international world.

Unjust society kills its own children like a rattled snake eats its own eggs. If our countrymen does not realise at this juncture the state of affairs then we will be very soon out of league even to think comparing with our arch enemy India whose system of governance is strong, and judiciary is independent, and

common man is confident of its system. Self accountability is a noble cause for nations who believe in truth, rule of law and justice. Denial of truth and sham convictions may for the time being put the founders of great nations behind bars but glory greets only those who strengthen their system. Qadeer Khan and Abual Kalam Azad is a glaring example like a slap on the face of tyranny. If this leaderless chain of events continue for little longer, then this time, even they will not require to lay down their arms as public will snatch those arms and put the barrels on their chest asking them to shoot at them.

Nation takes pride of their leaders and feels secure on the basis of the strength of their judicial system. Alas we have none at the current time. Current Government of Pakistan has turned into a rattled snake and is eating its own leaders and founders of its institutions whose efforts are enormous for the state of Pakistan whether its Qadeer Khan, Akbar Bugti, Nawaz Sharif, Benazir Bhutto, or latest victim Iftikhan Choudhary are witnessing helplessly. Time is asking them to lay down their weapons and preserve what's left otherwise eternal repentance will be their asset but will that repentance bring those times and leaders back?.

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‘Nation Needs Orders Not Observations’

Sharifs are approaching Superior Courts for a verdict yet again for relief for which one does not need permission in West i.e. right to free movement in the country of birth & nationality as free citizens. The early hearing is expected this week where well respected lawyer Fakhuruddin G Ibrahim will open the case and Attorney General will to oppose his own arguments. Younger brother of the exiled Prime Minister, Shahbaz Sharif who is also President of Pakistan Muslim League (N) was deported from Lahore Airport to Jeddah on Monday 11, May 2004 when he attempted to return to his homeland thinking that he be will be allowed to enter after Supreme Court judgement . Government of the day in defiance of the observation by the Superior Court actually deported Shehbaz Sharif without judicial oversight as exactly, he feared in his court case in Supreme Court. In that Judgement of Supreme Court Ref: 55/2003 the following is worth noting that no document was produced to confirm there is a contract and there was no denial to ‘freedom of movement’ rights by Lawyers of Federation, Judgement at Para 15 & 28 says, “15. It is significant to note that neither in the comments nor during the course of arguments the Federal Government/ Government of Punjab has disputed the right of the petitioner being a citizen of Pakistan to come back to the country nor referred nor brought on record any

agreement/document permitting the government to force the petitioner to live in exile. And at Para “28, It is not denied by learned Attorney General for Pakistan and Advocate General Punjab nor so could be denied that Article 15 of the Constitution bestows a right on every citizen of Pakistan to enter or move freely throughout the country and to reside and settle in any part thereof. It is a settled proposition of law that the right to enter in the country cannot be denied but a citizen can be restrained from going out of the country. The petitioner is a citizen of Pakistan and has a constitutional right to enter and remain in the country”. Still after this judgement he was deported back to Jeddah and that proves the following points: i) The current government does not care for rule of law and they found him guilty without trial of unknown charges and deported him under a contract which is unknown and unseen by judiciary and no access to court was provided; Post deportation, 9th March 07 reference against Chief Justice proves that point; ii) The government did not respect the Supreme Court observation that no restriction can be put on citizens on their entry and every citizen has inborn right to enter and remain in their country of birth; iii) the deportation of Mr. Shahbaz Sharif thus amounts to contemptuous behaviour of defying court order which continued till 20 July 2007. Legally, he should have been allowed to wait till his petitions were decided. Most important of all, current regime does not wish to see any opposition leader

carrying a political profile like Nawaz Sharif & Shehbaz outside on the streets telling the masses what is going on. That is a clear example of weakness on part of the government.

Why Sharifs are in exile is that Nawaz & Shahbaz held the position of Prime Minister & Chief Minister respectively in Pakistan until 12th October 1999, when General Musharraf removed Mian Nawaz Sharif's elected government by imposing military rule and all his family imprisoned while the old and the young of his family were put under house arrest for months. On the 9th of December 2000, Prime Minister Nawaz Sharif along with his family were exiled to Saudi Arabia. His brother Shahbaz Sharif resisted the extreme emotional blackmail and refused to leave his prison cell in Landhi jail in Karachi. Despite his resistance, he was forced to board the aircraft by the brutal force of the and even remarks of General Musharraf supported this contention in his book 'In the line of fire' at page 166, where he wrote, "It must be said that Shahbaz Sharif initially refused to sign and did not want to leave Pakistan. But we could not have this partial acceptance." Thus the family was sent into exile. Sharifs always maintained that there can not be a contract between a jailor and a prisoner and tried to attempt their return but Govt of the day always created hurdles sometimes by delay in issuing their passports, or putting restrictions when they wish to attend funeral of their father.

With this incident Nawaz Sharif was forewarned by his brother's deportation.

Its worth noting as to what the Govt have been saying about Sharifs and why Sharifs had to go to court(s) which in fact proved right even after Supreme Court judgement. The following are few statements which were before SC: (1) Faisal Saleh Hayat, Then Federal Minister for Interior (The Daily Dawn dated 17.01.2002): "Sharifs won't be allowed to return....." (2) General Pervez Musharraf (The Daily Jang dated 21.8.2002): "If they come back, Shahbaz will have to go back to Saudi Arabia and Benazir Bhutto to jail....." (3) Nisar A. Memon, then Information Minister (The Daily Jang dated 9.8.2002): "We will not let Shahbaz Sharif come back." And that's exactly what they did in May 2004 despite court ruling. Sharifs desired to return but feared removal and on 11th May, when as a result of Supreme Court observation and his two petitions to the Supreme Court where Court ruled that every citizen has a right to enter and remain in the country of his origin and there can not be any restriction put on his entry, Shehbaz Sharif tried to go back to his country of origin unsuccessfully.

Now Sharifs realising that Chief Justice himself has realised the pain and sufferings at the hands of the regime by standing in the dock and after 20 July 2007 decision there is a glimmer of hope to secure justice where justice is seen to be done and not

delayed so that it seems as denied. Sharifs have knocked the door of Superior Courts once again and a clear verdict is required this time to prevent any unlawful deportation without judicial oversight. These questions are circling in every Pakistani's mind today and only the Supreme Court now can save the future of the political leadership in Pakistan by allowing them a remedy this time to enter and remain in order to practise their constitutional right of taking part in political decision making and if there are any cases on them, they may defend in courts freely. If they (Sharifs & Bhutto's) are not allowed to participate elections being the top two party leaders who will contest and what repercussions it will have on Federation is alarming.

I remember during French revolution General Charles-de-Gaulle of France was asked to exile his opponent a fiery poet 'Jean Paul Sartre' and De-Gaulle said these historic remarks that Sartre is France and how can we exile France. I reiterate his words that Nawaz Sharif is Pakistan, how can rulers keep him in exile forever so time has come to allow him to breathe freely in the air he belongs. Nation needs clear orders from Supreme Court that none will be refused to return to their homeland.

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‘Presidential Election a Critical Overview’

Next 12 months in Pakistan will determine whether we can still come on the road to real democracy or the nation will have to wait further. Its long exhaustive wait and democracy is long over due in Pakistan. Our establishment needs to think rationally to bring Pakistan back to its original route for which Quaid e Azam made Pakistan without the assistance of an established military force and with the aid and support of commoners who opted out for Pakistan instead of United India. This was achieved solely on sheer determination to safeguard the interest of Muslims of United India and on ‘one man one vote’ rule which is extinct since the country’s birth in a short political history of Pakistan which is clouded by military regime(s) in General(s) Ayub, Yahya, Zia and now Musharaf’s form covering around 4 decades out of 60 years of Pakistan’s physical life.

There has been several news reports where President assured of taking his uniform off as per agreement but he did not keep his promise to which lawyer community has found unease upon this kind of unconstitutional decision which has kept Pakistan derailed from real civilian rule so far and that may not be the intentions of SC in Zafar Ali Shah case when SC gave Gen Musharaf 3 years to hold elections post military coup on 12 October 1999 and leave the civilian setup. Furthermore,

independent and fair elections are impossible if President of the nation who defiantly violates the constitutional position of Federation and solidarity to all irrespective of their stance of opposition is addressing only one party functions and as the elections are drawing nearer, it is very difficult not to take them as 'political processions' in the run up to election thus making him partisan linked with the aspirations of PML(Q) his own brand of political party which was assembled as a result of suspending one clause of Constitution, by horse trading and using NAB as a switching tool after coup to counter PML(N) + PPP alone. This tendency of lack of respect of the rule of law, unconstitutional mannerism undermines the effective role of judiciary.

The whole nation is trying to digest the insistence of General Musharaf to retain his uniform post 31 December 2004 in violation of his pledge to nation which is keeping Pakistan away from true civilian rule and there is no contingency either in place. He is retaining his second cap against the agreement with MMA one of the main alliance emerged as a result of 2002 elections who supported the General in legalizing his former acts in the form of 17th amendment to the constitution and since are regretting to believe the dictator on uniform issue as per Senator S M Zafar's book 'Dialogue on the Political Chess Board.' Ruler's insistence is also in contravention to article

63(1)d of the Constitution of Pakistan 1973. Article 63(1) d says as following: 63 (1) A persona shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora [Parliament], if –/(d) “he holds an office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder; or”

If we see his reign briefly we see his tactics somewhat hasty, he took over the state of business on 12 October 1999 as a result of a military coup and used a term ‘chief executive until 2001. In June 2001 he dismissed assemblies and assumed the office of President which became vacant after the resignation of President Rafiq Tarar. To date Mr. Tarar is of the view that he is still the duly elected President of Pakistan. General Musharaf has the privilege to send twice elected Premier, sitting Chief Justice and duly elected President Home for reasons unknown constitutionally in the case of two latter sending backs.

On 30 April 2002 he held referendum and declared himself the President with people’s vote of confidence. On 24 August 2002 General Musharaf announced constitutional reforms package widely knows as LFO (Legal Frame Work Order) and as a result of new elections General Musharf took new oath as President on 16 November 2002. In December 2003 his constitutional reforms were affirmed by the Parliament under Constitutional Amendment No 17. Under this amendment not

only his LFO was made part of Constitution but his Presidency was confirmed too. Under this amendment article 41 was changed which deals with the Presidential Election.

Now legal expert are of the view that his tenure comes to an end on 16 November 2007, some constitutional experts dispute that but to advance the discussion we take his latest oath & vote of confidence to start with. Article 41(5) confirms that Presidential Election(s) can be held 60 days before or 30 days after the expiry date of his current Presidency so ideally fresh election time frame will be ideally from 16 September to 16 December 2007.

Now the issue arises whether he can be re elected in Uniform, if we see the Article 63(1) d the answer is no, if we keep in view the overall intention of the 1973 Constitution of Pakistan, again the answer is no as 'Uniformed Presidency' gives a horrific picture of a Democracy only few handful countries out of over 166 countries in the world who have similar tendencies but no progressive nation is amongst that list. However, if we look at his previous trail of unconstitutional reforms marathon which include, his PCO, Judges sacking & oath under PCO, Referendum, Legal Framework Order, 2002 Elections, Local bodies system & polls and WPB Act 2006, it does not seem impossible that he will definitely attempt for the top slot.

His elections will be held under article 41 (3) & (7) of the Constitution. Now whether the President gets himself elected from the current assemblies which are unprecedented act as no assembly in the past voted twice for the President is one question. The other question is the political and constitutional implication of such election on the state of play as under Article 44(2) & Article 63(1)d the issues will need to be decided whether he can retain his uniform whilst going to electoral college and will it be his second or 3rd term.

17th Amendment brought back in the Constitution most of the '8th amendments' provisions which were originally introduced by former military dictator and were repealed by the Civilian Prime Minister unanimously. 17th amendment as well as an Act of Parliament to allow a General to remain in Uniform in contravention to Constitutional provision of art 63(1)(d) may be declared ultra virus as it hits the basic intention of the constitution and are unconstitutional, where COAS an employee of state takes the role of head of state. However as President kept his uniform post 31 December 2004 at a time when article 63(1)d became effective and decided otherwise to his promise to nation and current Parliamentary party readily passed a bill in Parliament to allow him to keep 'two offices' then we may expect the following from the President in coming days:

a) President may rely on his current strength in the shape and form of Q league and may bargain with the one of the main political parties one way or the other and get himself elected from these assemblies. Political parties on the name of 'giving exit to army' may opt out to vote him for next term. I feel personally that he may struggle to gather this kind of support due to disadvantage to political parties except Q league but the air tells that deal is negotiable and is available with certain sections of our current political Parties. In that situation uniform will be an issue and 'two offices Act of Parliament' may be used to counter that argument and this will be an ideal situation for President which will allow him to have his Presidency and command of armed forces to do whatever he likes with 2007 General election(s). Or President announces and holds fresh General elections before his own Presidential election is due either on the advice of Premier or by dismissing current assemblies if the 'resignation(s)' of main two opposition parties mature and brings new electoral college ideally of his own choice and numbers before his election is due from 16 September to 16 December 2007

b) Alternately, if the movement of opposition catches speed, the President may dismiss the current assembly upon resignations of opposition parties if they get together and or on the current

prevailing situation in the country very nearer to the expiry of his term so that he avoids his election, announces elections under care taker set up and throws election as a bait, that way he takes the sting out of any opposition movement and his own election and uniform issue goes in the back drop of fresh elections. In that situation his own election will be held once the new electoral college is formed and again he will wish to retain maximum powers & numbers. In that situation if he places his bet on Q league then unprecedented rigging may be in the offing and Punjab may be under a 'Pro Chaudry' in a care taker set up. That will be very alarming as fairness will not suit him as he may loose election, may not be Presidential candidate and on top of that may be asked to lay off his uniform as well by the coming Premier.

In all these situations what opposition can or can't do, will be very crucial. The only option which is strong and viable is that the electoral college is vacated by all current opposition jointly the moment current President announces his Presidential election if he does decide for that before General election though it will be a defensive position but opposition after resigning may initiate strong struggle to stop that election and demand for fresh general polls under neutral care taker set up and independent election commissioner on one point agenda.

There is an attacking strategy too ideally as Mian Nawaz Sharif former premier proposed to opposition parties to vacate the house now and continue up right struggle for free and fair elections under impartial care taker set up, to me ideally under judges as very few political stalwarts are left untarnished by our military regime(s) whom the political parties jointly will trust for holding election. In effect, the names of care taker set up nominees may further divide the opposition, and judges may be the best bet. In that situation, President will have no choice but to get elected from the next Electoral College, and opposition demands for fair elections under a neutral care taker set up and independent Election Commissioner as agreed by all parties where 'Judiciary' as a monitor is free to dispense justice independently without cloud of PCO's fair to all parties. At that time if with sheer will fair elections are held, that will close the chapter of current military regime in Pakistan for the time being. To end it completely, politicians will need to show political maturity, will and sacrifice in the interest of Pakistan. Federation and future of Pakistan lies with democracy which is not possible unless and until free elections are held under independent care taker set up where Election Commissioner is neutral and independent and judiciary needs to play its role.

In this process Supreme Court's entire role will be crucial as SC will be asked to determine few questions which are following:

Whether General Musharaf's first reign of President from June 2001 to 16 November 2002 in which he held referendum on 30 April 2002 to legalise his stay at office may be classed as one and whether he has finished his two tenures if that regime was legal under Article 44(2) of the Constitution.

What is the actual date from which his first or current tenure as President of Pakistan started.

Finally, the most important of all is, can General Musharaf retain his uniform and contest next Presidential Election against the letter and Spirit of the Constitution 1973 and in particular article 63(1)(d) which is effective from 31 December 2004 and can a simple majority Act of Parliament with supra constructional intentions override the operation of Article 63 as opposed to the requirement to amend the Constitution with 2/3 majority.

Supreme Court's ruling will be very crucial & if not given in time will lead to prolong one man's rule against the wishes of millions of Pakistanis whose will is already negated. SC gave 3 years to the dictator in Zafar Ali Shah case and its 4 years beyond that limit and there is no sign of him going and there is no one to ask the man when you will leave. I think its time that 'one man one vote' principle and an in born right of the people

is restored and establishment lay back and let the people decide what they want, and who they want and democracy in its true form is allowed to as Abraham Lincoln said' Government of the people, for the people and by the people.'

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‘What if the General does the Unthinkable?’

Sharifs were given a relief to enter and remain in order to continue political activity as guaranteed in the 1973 Constitution which is a basic right of every Pakistani citizen on 23 August 2007. A 7 member bench of Supreme Court in Constitutional petition No 48 & 49 of 2007 of Sharifs said in their short order which says as following: *“1) For reasons to be recorded separately, both the captioned petitions, being maintainable, are accepted. 2) It is declared that Mian Muhammad Nawaz Sharif, and Mian Muhammad Shahbaz Sharif, under Article 15 of the constitution of Islamic Republic of Pakistan 1973 have an inalienable right to enter and remain in country, as citizens of Pakistan. Their return/entry into country shall not be resisted, hampered or obstructed by the Federal or Provincial Government agencies, in any manner.”*

Sharifs have indicated their plans to return on 10 September 2007 and along with it regime has shown intentions of subverting those plans despite the order of the court. For readers I would mention that article 190 of the Constitution binds all authorities judicial as well as executive to ensure implementation of the orders of the highest court as it says, “All executive and judicial authorities through out Pakistan shall act in aid of the Supreme Court”.

The regime has developed alarming tendencies by bulldozing the constitution to secure one man's job at top slot and sacking elected Premiers twice, Chief Justice of Pakistan twice, President once as well as overhauling the Constitution to that extent that its neither Parliamentary nor Presidential. It does not end here; the ruler has the credit of deporting Shehbaz Sharif in May 2004 despite clear observations of Supreme Court of Pakistan.

Supreme Court, media as well as Civil Society fully charged along with 90,000 lawyers force will not allow the outgoing president to have first aid in the shape and form of any constitutional package to secure one man's future role before and or without ballot. This new power in the state of Pakistan will not allow the business of wheeling and dealing as the true dealers must rightly be '160 million people' and they must be given a right to choose their representatives through a ballot which is free, fair and transparent and it is not going to happen if General Mushrraf does not declare that he has withdrawn from his vested interest in continuing his armed forces employment as well as civil aspirations.

General Musharraf came to power to bring about true democracy and rule of law. His 7 points agenda is all but a shameful slogan seeing results of his 8 years reign when we see

land mafia and absconder and wanted criminals in the list sitting besides him as national heroes and good governance idea is sacrificed on the altar of scandalous government which has land mafia, sugar and cement crisis, oil price hike, steel mill reference, stock exchange crash, Nabbed' ministers and incidents of Bajaur and damadola are chasing him as his legacy. A common man fears for the worst if not stopped here and if permitted these rulers will not hesitate to sell any thing they grab as they are on 'hit and run' policy because their political days are numbered and only true Parliamentary democracy is the future of Pakistan.

If general Mushrraf tried to stop Nawaz Sharif and did not allow the nation to make a choice at free polls, then he must be ready for their wrath too as post 20 July its a new Pakistan and its a new political climate and people if risen will become unstoppable and 400,000 army men will feel helpless to impose martial law even if the General desires as the charged civilians who have still to digest the humiliation with the Chief Justice and incident of 12th May in Karachi are waiting for punishment to those responsible for the onslaught.

Pakistan does not need a martial law any more, it only requires a free and fair elections under a lawful authority and smooth running of the institutions as desired by the Constitution. People

will not allow these hybrids any more and military ruler must be weary of that. People are not willing to give in their rights so easily anymore. Nation is witnessing a change.

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‘Sharif’s Return: the missing link’

Its show time and 2007 is a year of felicitation as the order of the day is that no one will be missing, no one will be deprived of justice and their basic human rights and none will remain be supra constitution and nation is congratulating each other every other day as we have reborn in Pakistan after 60 years.

Sharifs were given relief to enter and remain and continue political activity as guaranteed in the 1973 Constitution as a basic right of every Pakistani citizen. This decision this also gives rise to a good omen about the current judiciary which is taking a new turn and bringing Pakistan from a crossroad towards the path of real democracy where judiciary plays its role as a monitor and institutions work as per constitution. This was the link which was missing during all martial laws in Pakistan.

Its irony that for basic clarifications of human rights of people and leaders of Pakistan, citizens have to knock the door of the top judiciary for relief whereas the constitution was and is clear about some of the basic rights like freedom of speech, movement and taking part in political activity but that is the state of play today that we need declarations for our basic rights to avoid ultra constitutional situations.

Judiciary has reclaimed its position after sheer criticism and hard struggle, media uprightly fought for its freedom and army already is an established wing in Pakistan, necessary to address the threat from our nuclear armed arch rival. Now is the turn of political clan to show maturity and work for Pakistan. From 20 July 2007 onwards, we have entered into a new Pakistan and sooner our political class realises that the better it is for them as they are to lead the nation towards a tolerant, vibrant and progressive democratic society which will not be easy if they are not united on some of the basic national policies for example complete freedom and submission to independent judiciary and promoting the concept of free media and no compromise on nation interests and urgent need of some of the social reforms packages which a common man is waiting for 60 years. The very media and judiciary will be a hurdle to cross for any potential leader who aspires to run Pakistan in coming years. Wheeling dealing is not in demand any more as it's what people desire matters for their own future.

Our military rulers must show little more courage and let the ball rolling and the nation must see the day light in the form of govt of the people for the people and by the people. Pakistan was made for the Muslims of subcontinent in order to protect their belief and to avoid slavery of Hindu majority. In 60 years we are neither truly democratic nor free. Our masters just

changed faces and colour and Quaid's words were never implemented. Pakistan is going through one of the worst crises of internal stability, future concerns and unrest at our rear borders which is ever escalating and growing. Pakistanis on two fronts are mourning their dead one at the tribal's, and the second at the armed forces personnel, and we are hearing threatening voices to do more in the 'war against terrorism' otherwise US will strike itself in the tribal areas. Nation question as to how long we will continue fighting a proxy war against our own for other's interests. We must call it a day and start learning to say 'NO' like veteran Nawaz Sharif did to President of USA Bill Clinton. We need a man of vision who can save Pakistan from internal as well as external threats. How long we will remain slaves and did we obtain nuclear arms to remain slaves and in order to to keep compromising on national interests, we need to show some courage on the issue of national self respect and strategic interests of the state before it's too late. In this struggle, gaining public support and continuing political process is the key to tackle western forces.

If President Mushraf after his failure to address US concerns and unsuccessful Afghan policy wishes to be remembered for his media growth and economic progress then he may consider one ideal choice by addressing the nation that he is neither Presidential candidate nor he wishes to retain his uniform,

allow free and fair elections to take place under a legally constituted set up which are not only free but appears to be free and independent monitors and courts confirm its fairness and allow the political exit of military from politics peacefully without fail and any derailment. This way, he will allow the historian to judge him what he gained and lost during 8 years of his reign.

Pakistan after 60 years is still fighting for the very question of its birth and nation demands justice with Pakistan as we have allowed too far, for this onslaught on a nation and state which has been bearing with our inefficiencies and cheap slogans. Pakistan a land of pure, and a dream come true desires some hard work from its sons of soil and we must pledge to make Pakistan a state it truly deserves to be recognized in the world, a modern, tolerant and democratic with Islamic values where voice of public matters, and justice is seen to be done at a door step of a common man and state takes responsibility of poor and sick and health and education is given to all and state looks after the needy and those who deserve true attention and above all where we do not have to run backwards but forward. We can make Pakistan a better country, if we remove the difference from our sayings and doings and serve the state as it truly deserves. As it stands, we have disappointed our country and let's make it better for next time.

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‘Musharraf Refused Entry of Democracy in Pakistan’

On 10th of September exiled Premier of Pakistan returned after 7 years of exile on a symbolic PIA flight number PK 786 from Heathrow to Islamabad, however he was shocked along with his fellow travellers that the so called mightiest and the most powerful man in Pakistan refused not only Sharifs but the entry of democracy in Pakistan, and his forced deportation vanished all the hopes of reviving the democracy and possible exit of the military from current political system peacefully.

I was one of the unfortunate lawyers who inherited a circumstantial brief to assist Mian Nawaz Sharif on that plane as well as, at the airport lounge in order to practically convert his aspirations to submit himself to the jurisdiction of the Supreme Court of Pakistan and to physically convey his feelings of peace, good will, and national reconciliation to his Pakistani people. To me this historic flight carried its passengers by luck like a lottery ticket as no one knew which plane Mr. Sharif will catch. All our efforts were unfruitful when all proceedings which were more or less peaceful were halted by a quick army style operation which resulted in push and pulls resulted in deportation of Nawaz Sharif to another period of exile, the term of which is unknown this time.

I would not mention the court order of Supreme Court which was violated here as General Musharraf's regime knows no concept of rule of law as his reign is full of contradictions of his sayings and doings. Alas his machinery did not learn any lesson from the reference of March the 9th then filed against Chief Justice, operation in Wana and Lal Masjid and 12th May massacre. In fact they restaged the same scene in the capital and made it like Beirut though only missing link was dead bodies.

We were dealt with by Sameer, Imam and Tahir Ayub, all lower ranking officers who had to go again and again to seek instructions from higher officials. They were less worried about Sharif's entry but more of losing their jobs and as the time passed at the airport lounge, composed Sharif won his moral battle against regime by just sitting in economy class with common passengers, travelling in ordinary bus and sitting for over 3 hours in ordinary lounge on an orange sofa and authorities did not even bother to come and talk to him and he was treated like a common thief forgetting that the man made Pakistan the 7th nuclear state and first Islamic state and he is one of the most popular leader in Pakistan along with Bhuttoos. Instead he was rushed out towards rear exit by a storm of intelligence officials on the false pretence that he is arrested administratively and will be produced before accountability court the very next day.

My faith in rule of law and justice in Pakistan though did not shatter but all the happenings have startled me with the realisation that matrix of military might have almost disabled the state structure and institutions are mortgaged to their strength. 160 million people could not ensure enforcement of larger bench's decision to allow Sharif's entry to continue politics as they acted like a crowd rather than a nation and preferred to watch television at home whilst the regime was shattering all the norms of national and international laws and Sharif was returned without even entry endorsement on his passport.

The historic flight pk786 landed, Nawaz Sharif came and was returned leaving many unanswered questions but one thing which is undoubted is that unarmed Sharif rattled the confidence of dying regime minute by minute as long as he was waiting entry clearance at the lounge. Who knows next time he comes like a Khomeini of Iran.

Amjad Malik is a Solicitor-Advocate of the Supreme Court of England & Wales and was representing Mr. Sharif as his Lawyer throughout his four and a half hour stay at Islamabad airport on 10th of September 2007.

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– Pakistan*

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‘Ball is in Your Court’

On 28 September 2007, nine member bench hearing the identical constitutional petitions comprised of Justice Rana Bhagwan Das, Justice Javed Iqbal, Justice Abdul Hameed Dogar, Justice Sardar Muhammad Raza Khan, Justice Muhammad Nawaz Abbasi, Justice Faqir Muhammad Khokar, Justice Falak Sher, Justice Mian Shakirullah Jan and Justice M Javed Buttar in their short verdict dismissed all the constitutional petitions declaring them not maintainable by 6:3, as a result the top judiciary threw the ball in the court of parliamentarians who gave exit to a military man to re decide whether President General Pervez Musharraf could win the presidential elections with their votes on 6 October 2007.

Though the judgement is quite to the contrary to the expectations and wishes of the people of Pakistan which were raised by the judgement of 20 July by Justice Ramdey’s court but since its early days of this newly achieved independence as a result of lawyers movement therefore the legal hawks were expecting this sort of mild decision on the logic to save the system thus avoiding martial law the old fear in Pakistan at all times and SC once again lost the chance to nip the evil in the bud and bury ‘the law of necessity’ forever and exit manipulate military from national politics. However SC refused such relief inviting the Parliamentarians to do the dirty themselves and

asked them to decide whether they wish the General to be elected or not.

This is the time that main political parties must consider the options to vacate the electoral college before he is re-elected or if its too late, to put all the efforts behind one neutral candidate to show spirit of participation in electoral process otherwise people have to put up with military controlled democracy for further five years which may result in tragic incidents like 1971 looking at kidnapped army personnel's in Waziristan and wishy washy statements on Dr Qadeer Khan.

As the battle for true democracy, rule of law and justice in Pakistan has not finished and it will be unwise to link it with one judgement or with one judge because it has merely begun with this decision, and one thing for sure SC closed the doors of going to courts every Friday for seeking political decisions. Its up to the politicians to close the gap of improper accommodation of any individual ultra constitutionally against the letter and spirit of the Constitution of Pakistan wherever it is with unity by sheer intelligence, reconciliation in the wider interest of the state and in order to promote democratic process.

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‘12 October and Our Real Goal’

On the 8th anniversary of military coup de tat in Pakistan, one wonders at its results as it is a quick reminder to the nation that we are still far away from our real destination. Nation is already in a shock to read the latest so called ‘National Reconciliation Ordinance’ of General Musharraf which seemingly legalising corruption of our 80’s and 90’s era and exposing him on his claims of good governance and corruption free politics as well as our political clan’s unprincipled politics where the common man is yet to gauge who is in government and which is classed as main opposition.

In last 8 years, the regime did not leave any stone unturned to serve its masters and have learnt nothing from its predecessor who declared out loud that their masters can never be their friends so did Zulfikar Ali Bhutto in his famous speech in Parliament before he too was ousted, that conspiracies are being hatched against him pointing toward hidden forces. However, still our flag carriers are at war against its own people, our soldiers are kidnapped and they are dying for a lost cause, people are migrating from the tribal areas who were once considered our back bone and our founder’s remarks carry no weight to current rulers who make an ordinance in haste on one day, and realising its shameful effects express their regrets the next day calling it a political tactic and one is tearful at this

shameless indecent assault on legislative making process. In the history of great nations, reconciliation is a good thing to start in order to re-continue a derailed political process, however finding similarity with that of a 'truth and reconciliation commission' of South Africa is injustice as wiping out corruption allegations at will with a twitch of a hand without judicial oversight is a sign of conscious blunder for which there should be no forgiveness. Great nations struggle on principles here the case is quite to the opposite and it is noteworthy especially in a poor country like Pakistan where free education, health, housing and employment is still a dream, and politics is run on slogans than performance.

I think enough has been said about the 7 points agenda of General Musharraf which proved an illusion as was the slogan of General Zia to hold elections in 90 days, however if the dictator is truly interested in National reconciliation, he would have welcomed Mian Nawz Sharif's arrival after Supreme Court's order on 10th September 2007 rather than deporting him in exile whilst he is welcoming an other premier Ms. Bhutto. Court orders are not obeyed with announcements, they are obeyed without hesitation and the way this regime has made fun of those orders, it has made the country a laughing stock internationally. Even now, military leader must act for an open and frank public discussion in the supreme national interest

with all political parties ensuring equality to discuss how an exit of military from politics can be practically made possible and how a fair, an un manipulative and transparent elections can be held in Pakistan. and regime must give a right to the nation where it belongs to choose their representatives through a ballot which is free, fair and transparent under 1973 constitution under a transparent care taker set up where powerful election commissioner holds credible elections with confidence of the opposition as well as the nation and independent monitors could verify the authenticity of those elections.

For doing this, General Musharraf does not need an ordinance, he must come up with an offer of an unconditional talks once he doff off his uniform declaring that he will be up for the vote of political parties after the general elections are held, and allows the civilians to take charge to run the affairs of the state and allows free media, and courts, to make them accountable to the nation and let the Parliament be sovereign as is the case in any democracy rather than a fictitious set up which will be a fallacy. Little late, and there will be no time for repentance as we are surrounded by the fire he has ignited all around in Waziristan, Baluchistan and Karachi on 12th May and survival will be very difficult without credible political process.

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‘Man is in Crisis’

Recent events in Pakistan post 3rd November 2007 clearly depicts a picture that we, as a nation has failed to manipulate political exit of military dictators from our civilian set up even after 4 trials and alas we will not be able to use General Pervez Musharraf’s 8 years experience of dealing with West in the national interest of Pakistan and its all due to his rigid realisation that he is indispensable. Hidden powers did the same with Ayub Khan, Bhutto, Zia and Sharif as they were taken off the scene, when they were needed the most, and now history is repeating itself. Most of the blame goes to the man himself as when he was powerful he refused to sit with his dire opponent, and bluntly refused to allow his entry risking even contempt proceedings and seeing media hostility in West towards him, it seems that the product he was successfully selling to the West that he is the only man to curb extremism in the region and can contribute heavily in their ‘war on terrorism,’ that product has found new salesmen. He is getting old, and his own disciples and allies are not willing to trust and bear with him and the irony is that we have strategy.

Pakistani nation amongst a few in the history of modern times who witnesses helplessly the character assassination and political demise of any potential rising leader at the hands of

the dictators of its time with foreign aid without any judicial oversight . When popular leadership is politically assassinated then we are left without a voice. Pakistan is seriously suffering from a vacuum. Empty floor is occupied by turn coats that can bargain on anything and have no morals and principles and have no love for the country. Pakistan is seriously a victim of lawless clan of a few who do not understand the language of law. Might is right is their motto and oppression is their answer. In these circumstances democracy, free judiciary, political wise leadership, free media and accountability is a dream which may never come true.

Our political clan has not shown ‘whiter than white’ philosophy either and lust for money, greed for power and intolerance for others have damaged the original principle. Autocracy has not confined to one particular institution and or party it has become a common phenomenon in our mind set. Time has come to change our course and call for a public accountability. This nation is not a private land of any one particular individual, group, class and or party. This land of pure is a shelter for all classes, cultures and safety zone for all languages and geographical heritage on top of that it has a scared role of leading and assisting the Muslim community of nations by preserving its own. If our countrymen does not realise at this juncture the need of justice then we will be very soon out of

league even to think comparing with our arch enemy India whose system of governance is strong and judiciary is independent coupled with free press and common man is confident of its system. Self accountability is a noble cause for nations who believe in truth, rule of law and justice.

We have still time to recover from the steps which have taken our all time popular in the West military man which is leading him towards a dead end. All segment of the society has been made his enemy by a planned and coercive well thought strategy & advice he receives and he himself is at the verge of ruining what he himself built in last 8 years, free media and enlightened and moderate society. Now the society is awake and he wishes them to go to sleep. Let historians judge his good and bad but General must restore the constitution, and revive the credible political process, restore the dignity of judiciary, lift the state of emergency and allow the people of Pakistan, a right to choose their representatives under the scrutiny of free press and media and give equal playing field to all political components. If he leaves it a little later, the new salesmen are ready to sell your product which you sold successfully for long 8 years with a different package and in that case state may suffer a huge blow and the damage will always be written in his account books by critics. The new cover and the new slogan to return Pakistan to a viable state where all institutions are intact

so as nuclear programme as a product is ready to be sold to the West by the new sellers, can he save this situation is a million dollar question. The lesson of history is that we do not learn any lesson from it and same applies to the current ruler who must try to listen.

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‘Bhutto’s Murder & Probe Questions’

Pakistani nation amongst a few in the history of modern times who witnesses helplessly the political and physical assassination of any potential rising leader at the hands of mighty clan of few in last 60 years. After the death of Barrister Jinnah, the nation felt that Liaqat Ali Khan will take the mission forward but unfortunately he was shot in front of his own people at Municipal Garden Rawalpindi in a daylight and shooter was shot dead at the spot. Another popular leader emerged within a martial law of Gen Ayub Khan and we saw the fate of Zulfikar Ali Bhutto whom western world called ‘zulfi’ a man with a vision and passion for his country who not only inaugurated the idea of making this nation an atomic power but also signed to bring infrastructure as well as the man with know how. He successfully advanced the country on the route to progress front nationally as well as on foreign front but when his wisdom and skills came nearer to serve Pakistan at the highest level he was sent to gallows and ‘was made an example’ as he himself warned. His death was a fatal blow to the state of Pakistan. Even Gen Zia on 17 August 1988 was removed by a plane crash the reasons of which are yet to be probed fairly. Then came a businessman who aspired to translate this declining economy a vibrant, powerful and progressive market and bridge in between hot waters and states of Asia and his first reign was called a way to turning this country a ‘tiger of Asia’

as said by a top magazine of its time. However his rule was toppled yet again by a powerful military dictator and he was exiled in 2000 for the 7 years slot. And last on 27 December 2007, at the surroundings of Liaquat Bagh stadium twice Premier Be Nazir Bhutto was killed in mysterious circumstances and was removed from the scene thus signalling that any leader will have to work with establishment or else face the unfortunate fate.

Now the million dollar question is who will probe this tragedy. If the victim party is serious to probe their leader's death then they will have to come up with their demand of probe first and seek power later and if they wish to gain political advantage or sympathy vote then they will have to move forward for elections first, I feel trying to achieve both may result in getting none. If they are truly after the mystery killing a serious concerted effort may be carried out to probe the facts, cause of death and perpetrators behind this attack and may reach nearer to a stage where the hand behind it seems a little obvious but he may not know who exactly was behind all this. We have seen in the case of Princess Diana of England and Wales who was queen of hearts was killed in a car accident in Paris and years on we are still wrangling questions about her death. John F Kennedy United States President was shot dead in a day light akin to Benazir Bhutto like situation and we are yet to know

who was truly responsible. US, UK or Pakistan political murders are a mystery maze and unless local establishment is honestly desirous to know the truth, it's seldom found.

Now we come to the forum where this investigation takes place, I think national investigative agencies under a high powered judicial commission which is powerful enough to commission reports from all quarters consisting of a top non controversial SC judge ideally from Sindh, top military official (at least current or former Chief of Army Staff) and top doctor (international renowned or credible) which may take assistance and rely on foreign, international as well as national forensic and technical support may probe the few obvious questions as to cause of death and people who physically killed her and who are behind it and it can be done locally as long as Pakistani administration is serious to assist and cooperate with that high powered commission. That is only possible if the govt have not made up their mind already as to who has killed and what has caused her death and looking at interior Ministry's negligent press statements after the death supports the latter. In any event, if the consensus is achieved in establishing that Commission, it may find the answers to obvious questions as to the cause of death, and who did, it like they have done in the case of assassination attempt on then Chief of Army Staff cum President General Pervez Mushrraf in Islamabad.

Finding truth now after 4 serious top level killings in only 60 years is a matter of national importance, public interest and nation's pride internationally which affects our status in the community of nations. If they are not serious then UN Commission or other Western countries may be contacted who may not be as effective as if not seriously and honestly aided locally, they too will come to a standstill at some point on the issue of who is behind it. Or alternatively they may find answers to easy questions and at a stage to find the last question as to who did it, the guess work may be used to aid the national interest of their countries if nothing clear, they will not watch the interest of Pakistan as a state .Pakistan which is strategically placed at a hot pot and centre of media frenzy due to being an atomic power does not deserve this treatment so giving the country in foreign hands to play about on that serious question at a volatile time is not an ideal and practical way of reaching to the answers of the question which has become a national demand in unanimity. Whilst we must all call for justice with BeNazir Bhutto, still we must ask that the justice must be seen to be done. Musharraf regime will also be considering now after loosing the non controversial judges who could have handled this probe credibly even if they would not reach to the heart of questions. However, the damage has already been done by his own hands by nipping his own top judiciary, detaining and

sacking clean judges and gagging free media, the support he needed in this time of serious crisis of credibility.

Its time to change the course of our country and gem the crowd of people into a nation of 160 million towards building the country a strong and powerful developing tolerant Pakistan which has a role in community of Western and Islamic nations and realise too the danger the country is facing and that is not possible if from today we do not initiate the process of self accountability and march towards justice for all in our society. Establishment should look towards detained judges, incarcerated lawyers, martyred political leaders like Liaqat Ali, Bhutto's, and confined heroes like Qadeer khan and disappointed Imran Khan and out of race of elections Nawaz Sharif and ask a very simple question what was the main objective in obtaining Pakistan from the colonial powers and are we truly serving the state as was envisaged and chartered by its founder Mr. Jinnah.

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‘Will Pakistan Survive?’

Barrister Jinnah fought hard in persuading British Empire to allow Muslims of sub-continent to have a separate homeland to safeguard the identity of rich nation and their Islamic culture values and freedom in their way of life as there were distinctive differences between Muslims minority and Hindu majority of Indian subcontinent. However, at this critical juncture his soul would be perturbed to see first ‘klashenkovs’ and now ‘suicidal attacks’ and weaker judiciary resulting in by periodical military regimes in Pakistan quite contrary to Islamic teachings which depicts that one may survive in cruelty but a society built on injustice can not coexist. West followed that principle in practice especially in their way of dispensing justice and freeing media and Britain is noteworthy in that effect particularly as freedom of citizens was never compromised. That clearly pin points one aspect of the weakness of Pakistan that it could not develop a formidable civil system of governance in good 60 years which could continue despite having a road map, and strong military as an institution always came to rescue due to political immaturity of our political clan or distrust amongst stake holders and that will always remain its minus and positive point. The bleak rule of law & justice situation and unlawful killings of its political stalwarts especially Bhutto’s and nexus of military with judiciary may not mirror its founder’s true views and vision about this outstanding nation full of talent,

skills, and vigour and poses a serious question, will Pakistan survive in days to come?

Admitting that situation is bleak as far as rule of law and democratic drive and media freedom is concerned, still its not enough to question its territorial existence as we will have to see the reason for which Pakistani people obtained this country. This country was obtained by way of one man one vote and most of the votes were cast by lay people who were focused as their aim to have independence and they freely opted out for a free state and refused to accept slavery in a country where they ruled for centuries. To me the original principal is still intact and survives. People of Pakistan though going through a series of crises especially finding political system under which governance takes shape but are still determined not to loose their freedom and they are not willing to rejoin their old foe so united India is out of question. Now we move to second stage and it is acceptable that hidden powers breed the idea of fragmentation of Pakistan. That may be a valid blackmailing tactics to suit an individual state interest, but rarely possible in practice as the remaining Pakistan post 1971 is geographically located in a spot where its fragmentation will cause a serious threat to the stability of the whole region and in return to the wider world and any foreign interference may have serious repercussions as a result because no power would afford a

backlash as a result of a failed attempt of fragmentation on an atomic power. Therefore, its division in pieces no matter how glossy can not materialise due to country's strong defence mechanism and Pakistan being the only Muslim state with atomic armament which provides regional stability through its ideal strategic location. Looking at the recent past, English fought Irish, Indian faced Sikhs separatists and other developing insurgencies, Srilankans at war with Tamils, Afghanistan saw off Russian invasion in 80's and is on its 2nd haul of turmoil during and post Taliban and US went through bi polar system, Cuban missile crisis, Kennedy's death, Vietnam, as well as 9/11 and Japan too saw Hiroshima but no where the issue of state instability crops up. Similarly, Pakistan is a state where a full mechanism of running and defending this nation of 160 million is in place and one aspect in particular to defending the sovereignty of the state is in fact, stronger than ever before.

On this basis, I will say that Pakistan is there to survive for years to come as Pakistan is a homeland, a shelter of different casts and creed, safety zone for Islamic heritage and protector of many languages. Its cosmopolitan diversity is its unique feature and its strength is its foundation on which it was made. As the foundation is so strong, the remaining issue is to build the country further on this stronger foundation and take it on a route to progress, tolerance and truly democratic Pakistan which

is quite up to the people of Pakistan who needs to come out of its shell and turn themselves from crowd to a nation. How can people achieve that task is a valid question for all the leaders of Pakistan too, military as well as Civilians. Its political leaders also carry the blame for not being able to promote genuine leadership, political process, and accountability on national level, and military leaders for not being able to leave a genuine democratic leadership from educated middle classes in succession once they had a chance in Ayub, Zia and now Musharraf's regime. Pakistanis remained leaderless after years of military regimes and people could not come out of status quo and started from scratch after the regime left leaving his foot prints. I think institutional strength along with preserving judicial independence, free and responsible media are keys to join the road map towards democracy. Military establishment must foster and pave way for true leadership and try to confine themselves to the task of 'defense of the realm' and allow a political process to continue coupled with free judiciary & media, and allow the system to shuffle across and separate the chaff from grain after periodical elections ideally after every 4 years. After four or five elections Pakistan will have true leadership to run the political side of the country and military can go on the back drop forever. If we allow people to responsibly elect its leaders and allow the system to run, I do not see any reason why those millions whose ancestors laid

their lives on one call of their Quaid Mr. Jinnah and chose Pakistan freely as their choice, will now make mistake to choose who should govern them. Given the choice collective wisdom will promote unity and federation and the people will find a viable political process too.

Pakistan is there to survive, West is sometimes pre mature in their hasty assessments to forecast a destabilized Pakistan on any mishap or genuine calamity, I would say they react quickly and its the beauty of their system and freedom of media that they are heard quickly too. Pakistan an atomic power who announced its nuclear in a tit for tat tests with its arch rival India in May 1998 though it acquired this technology in 80's long before its official announcement on 28 May 1998 so questioning its command to hold such arsenal seems baseless, keeping in view that the country acquired this technology not by choice but as a deterrent once its arch rival tested its nuclear facility and posed a clear and present danger to the defense, security and sovereignty of Pakistan and the whole South Asian Region. It is arguable that the money could have been well spent on people's welfare but that applies to both the countries. However, critics in West and in Asia are justified in pointing out that more can be done to secure institutional strength and to attain truly elected genuine leadership with true democracy is the real challenge confronted to all Pakistanis and that's what

they must concentrate on attaining this in coming years as given the opportunity this land of pure is fertile enough to do miracles.

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Pakistan

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Chapter 4

Articles related to Overseas
Pakistanis

‘Pakistan’s Crossroads’

As Pakistan celebrated 60 years of independence, Amjad Malik says that Pakistani lawyers, judiciary and media has a key role to play in restoring the rule of law in the country post 9 March 2007. More than a million Pakistani people have settled in the UK since the country’s creation 60 years ago this week, creating a unique relationship between the two nations.

However, Pakistan has struggled to establish itself for various reasons, such as the death of its founder Mohammad Ali Jinnah (who was called to the bar at Lincoln’s Inn) shortly after partition, as well as poor infrastructure and a lack of political and economic stability in its early life. Nearly four of its six decades of life have seen military regimes. Pakistan’s parliament is still struggling with other institutions for its sovereignty, while the judiciary and media are both fighting hard to come out of the strong grip of military rulers.

In recent years, the UK and Pakistan have signed bilateral agreements and protocols to promote co-operation in various sectors. In particular, in 2003 the respective judiciaries signed a memorandum of understanding to tackle child abduction. This also promoted better standards in Pakistan’s legal profession. During last few years lawyers have also extended their visits to

each other societies in order to foster relations and promote good will

Then came 9 March this year, when Pakistan's military ruler, General Pervez Musharraf, tried to subdue the Chief Justice, Iftikhar Mohammed Chaudhry, by suspending him from judicial work, incarcerating him and making him incommunicado, along with his family, without counsel. The legal fraternity stood up for him and that single judge conquered the hearts and minds of the Pakistani people. Even *The Times*, in an editorial in March entitled 'Judicial Error', said General Musharraf should reinstate the judge. 'Good generals know when to retreat,' it declared. I wrote to General Musharraf in March, arguing that the procedure adopted gave rise to serious questions of impropriety and of whether the Chief Justice could ever have a fair hearing. The Chief Justice resorted to the courts and eventually petitioned for justice in his own court. On 20 July, a Supreme Court bench of 13 judges quashed the decision and restored the Chief Justice to his old position.

Other recent events in Pakistan, including the 12 May massacre in Karachi when the Chief Justice was due to address the Karachi Bar Association, military operations at the Red Mosque in Islamabad, and a sharp increase in suicide attacks, prompt

serious questions of the ever-growing threat of radicalisation in Pakistani society and the ever-widening gulf between liberals and theologians, trends which can also be seen in the UK. Then came 3rd of November where military man lost sight of all he did in the last 8 years and with a twitch of a hand vetoed his own asset, I leave that to the historians to judge him for either his dictatorial actions or his intended prosperity, but one thing is clear that his advisors took him to dead end as famously quoted President Nixon on the importance of the quality of aides.

I believe simple democracy with justice can solve half of the problems in Pakistan. In the whole power struggle, the common man is suffering and middle class conservatives are losing ground. The west must play its role to ensure free and fair elections in Pakistan under a credible caretaker, together with a powerful election commissioner and independent monitors. The sooner the nuclear-armed Pakistan returns to normality, the better it will be for the rest of the world. The fear is that radicalisation may increase while the military runs the country, as it makes compromises with hardliners to make up for its lack of legitimacy. Only a civilian set-up can absorb these radical ideas, by addressing political issues through dialogue and stopping them from multiplying.

As a frontline state in the ‘War against terror’, Pakistan is a key country that needs the attention of the west as well as its own masters ‘military rulers’. The historic judgment of 20 July is potentially a turning point in the country’s short history – Pakistan’s leaders are now at a crossroads. The western world, along with **Pakistani lawyers, judges, civil society and media** have a very important role to play to return Pakistan a country akin to a ‘dream come true’ to a democracy where the rule of law, rather than military rule, holds sway. Pakistani lawyers abroad share their brethren lawyers in their struggle for rule of law, independent judiciary, justice and democracy and above all supremacy of 1973 constitution in Pakistan.

14 August 2007

Written on 60th Independence Day Celebration

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‘One million Pakistani origin Brits in fear of new visa regime by US’

It is alarming to read a recent development that United States is considering imposition of visa regime on Pakistani origin British citizens who intend to visit USA in the wake of a threat of possible terrorist attacks in US. Though this New York Times report has been vehemently denied by British and US officials but after the sentence of 5 terrorists who were planning to bomb London with their fertilizer bombs, i fear something is cooking in the pot.

Around 1 million Pakistani born or of Pakistani origin currently settled in Britain digested this news with alarm as they are of the view that small minority must not be imposed on majority. Some criminals may go beyond limits and have been punished and sentenced by the court of law, that does not mean that all other people living in Britain condone their activities. Everyday Britain sees murders, rape, robbery, assault, kidnapping and racially motivated crimes committed by other communities, in return those who commit crimes face prosecution and no one blames the community they belong for the sufferings they bring to the victim(s) and their families. When the turn comes to Muslims and Pakistanis everyone paint all the community with the same brush which is not acceptable and intentionally unlawful.

Muslim voice of quality is rarely presented. Conservative Muslims (i.e. Masri & Abu Hamza) who are in majority are not projected, the way the outlawed clerics who are given press coverage. If the voice of majority is not promoted by west and the views of moderate Muslims are not given due consideration equal to the views of indigenous community, then writer fears that whole sale oppression and persecution may be in the offing as US alone will not ban Pakistani British entry but the whole world will toe the line and will create a diplomatic disaster.

British press failed to give equal coverage to the good of Asian culture which brought diversity, taste and skill to this modestly speaking favourless society. Those hardworking migrants are running their cookery shops, stores, factories and 50% of the industry in IT, commercial, and skills based industry. If this situation remains and Britain becomes a party to these proposed regime(s) Britain will soon be empty of these skills and migrants will move forward to make a new heaven of a country who welcome their skills let that be Canada or Dubai.

If we look at European Convention of Human Rights such proposals are unlikely to get a validity under article 14 of ECHR which says, 'The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any grounds, such as sex, race, colour,

language, religion, political or other opinion, national or social origin, association with the national minority, property, birth or other status.’ It clearly states that enjoyment of rights may not be restricted on the basis of race and or ‘national origin.’ Any proposed pact may be challenged if not retrospective and may be called in question under the Race Relations Act 1976 and or unlawful under section 6 of the Human Rights Act 1998 saying that any public authority not to act contrary to Human Rights Convention as being incompatible with the appellant’s Convention rights.

Situation may not differ on public front in United States as if these proposals are offered if any to other countries then what would be the situation in homeland in USA where I believe a lot of Pakistani professionals including doctors are settled who belong to the same origin. US Courts view may differ from the political view as well in the light of US Supreme Court decision under *Brown v Board of Education*, 347 US 483 (1954) where so rightly Supreme Court gave decision against segregation of white and Black children in the public state school solely on the basis of race because that segregation was against the principle of equal protection of law guaranteeing Fourteenth Amendment, which says as following at para (1), “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the

State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". Looking at the spirit of fourteenth amendments these reports, proposals seems discriminatory to many human rights lawyers and organisations.

General Mushrraf when asked to comment about the involvement of Pakistani origin involved in the masterminding of 7/7 underground bombings, blatantly said in an interview to BBC 2 in July 2005 that Britain produces those suicidal bombers not Pakistan and said that they are British born and bread citizens of United Kingdom who occasionally may have visited Pakistan once or twice their parents home land and nothing more than that. They are Brits and will remain Brits and if these dual national remains in limbo for a little longer then developments in British nationality laws under 4 of Nationality, Immigration and Asylum Act 2002 which amends earlier laws of the land and empowers secretary of State for Home Affairs to deprive of a citizen of his citizenship on accounts of his activities and a fire brand Muslim Cleric has been the first prey of this law forces me to say that if the receiving country considers them British and Brits are going to deprive citizen of

their citizenship and United States proposals are widely accepted, then there is a risk of massive Pakistani Brits looking for safe passage.

This is the testing times for Pakistani origin member(s) of British Parliament and politicians to be vigilant as support for labour government may suffer if during reign British Pakistanis come to suffer these draconian visa regimes arbitrarily and discriminately as there has already been much discussion on their immigration reforms which are creating hardships to migrant community whether it is visa fees, new laws on marriage(s), and settlement. Statement in house of Parliament by Prime Minister and or Foreign Secretary may be the way forward to assure affected dual nationals.

4 May 2007

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‘Can Britain be a silent target in retaliation of London activities of exiled fire brand(s)?’

The question which is circulating in every one’s minds in London’s Pakistani circles is whether we may be under a retaliatory threat due to events developing on and after 12th May in Karachi which virtually held the city in a siege and for 6 hours the city observed the worst lawlessness which did not spare a popular private channel too.

On 15 May 2007 Daily Telegraph in London wrote about Altaf Hussain in their title story as *‘Running Karachi-from London which said, “the man in charge of Pakistan’s largest city, Karachi, was at his usual command-and-control post at the week end, a sofa in north London.”’* News story further sent shock waves to the readers when it said, *“As his fiefdom descended into brutal violence, with the deaths of at least 40 people reported amid the worst political bloodshed Pakistan has witnessed in years, Altaf Hussain directed his followers by telephone from a safe place more than 5,000 miles away”*. The article written in Telegraph by Isambard based journalists Wilminson and Damien McElroyon on 15th May issue in last lines quoted, *“When asked why Mr Hussain was not deported to Pakistan before he was granted citizenship, a British diplomat said: “He has not committed a crime on British soil.”* The writer does not agree with that comment of a senior

diplomat whose name is not given and the comment in question poses a question of critical evaluation of British position under law whether MQM Leader's activities in London which needs full executive scrutiny by Britain in the wake of recent killings in Karachi (Pakistan) on 12th May 2007 and poses a legal question whether he can ever be removed from Britain and handed over to Pakistan on account of his activities? The writer is of the view that it is not impossible under law, however, difficult in practice. If some one was British Citizen he was untouchable prior to instructions of Asylum and Immigration Act 2002(s.4) which changed Nationality Act 1981 (s.40) under which Muslim cleric Abu Hamza was the first victim whose case was highly publicized and reported as he was also required by US for his criminal acts and extradition was desired as was reported under [2006] EWCA Crim page 2918. In that case at para 32 of the judgment the court referred a few paragraphs of the comments of Sir James Stephen in his History of the Criminal Law of England, published in 1883 made the following comments at pages 12-13 (which i feel is relevant to the readers):-

***"CRIMES COMMITTED ON LAND OUT OF ENGLAND –
With regard to offences of this class also there is little
difficulty. I am not aware of any exception to the rule that
crimes committed on land by foreigners out of the United***

Kingdom are not subject to the criminal law of England, except one furnished by the Merchant Shipping Act of 1854 (17 & 18 Vic, c.104, s.267), noticed below. There may be exceptions in the orders made under the Foreign Jurisdiction Acts. A question of the greatest importance and delicacy is connected with this matter which has never yet been judicially decided, and which, when it occurs, will deserve the most careful consideration. It is this: How far are acts committed abroad, which if committed in England would be crimes, recognised as crimes by the law of England for the purpose of rendering persons in England criminally responsible for steps taken in relation to them, which if taken in relation to crimes committed in England would make them accessories before or after the fact, or which would amount to a conspiracy to commit it? As regards the particular case of murder and incitement to commit murder, the matter is now set at rest by 24 & 25 Vic, c.100, ss 4 and 9. These sections provide in substance that persons who conspire in England to murder foreigners abroad, or in England incite people to commit murders abroad, or become in England accessories (either before or after the fact) to murder or manslaughter committed abroad, shall be in the same position in every respect as if the crime committed abroad had been committed in England."

The issue before us is whether Sir James was correct in his analysis of the 1861 Act and can someone be tried under existing law of land if the crimes are actually committed abroad and what would be the situation if the person in question sought protection under Geneva Convention at some stage and has been naturalised as citizen of the state. We need to see the relevant national & international instrument under which Geneva Convention protection is granted. An asylum seeker seeks protection under article 1(a) of Geneva Convention 1951 which says:

“Article 1 of the Geneva Convention says, “Owing to a well founded fear of persecution for reasons of race, colour, nationality, membership of a particular society group or political opinion, is out side his country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being out side the country of his former habitual residence... is unable or, owing to such fear, is unwilling to return to it”.

British Immigration Rules says under 334 HC 395 regarding grant of protection, the rule says as following,
“334. An asylum applicant will be granted asylum in the United Kingdom if the Secretary of State is satisfied that:(i) he is in the

United Kingdom or has arrived at a port of entry in the United Kingdom;(ii) he is a refugee, as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;(iii) there are no reasonable grounds for regarding him as a danger to the security of the United Kingdom;(iv) he does not, having been convicted by a final judgment of a particularly serious crime, he does not constitute danger to the community of the United Kingdom; and(v) refusing his application would result in him being required to go (whether immediately or after the time limited by any existing leave to enter or remain) in breach of the Geneva Convention, to a country in which his life or freedom would threatened on account of his race, religion, nationality, political opinion or membership of a particular social group. 335. If the Secretary of State decides to grant asylum to a person who has been given leave to enter (whether or not the leave has expired) or to a person who has entered without leave, the Secretary of State will vary the existing leave or grant limited leave to remain”.

Asylum application is refused if it does not meet the criteria set in rule 335. However same convention at article 1(f) confirms that a person is not entitled for same protection under Article 1(f) and or Article 33(1) of the same convention if he is involved in criminal activity. Article 1(f) of Geneva convention

1951 says; “F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that. (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.”

Article 1(f) is mirrored in Rule 339 of HC 395 where **Exclusion from humanitarian protection is detailed in following terms,**

“ 339D. A person is excluded from a grant of humanitarian protection under paragraph 339C (iv) where the Secretary of State is satisfied that: (i) there are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes; (ii) there are serious reasons for considering that he is guilty of acts contrary to the purposes and principles of the United Nations or has committed, prepared or instigated such acts or encouraged or induced others to commit, prepare or instigate instigated such acts; (iii) there are serious reasons for considering that he constitutes a danger to the community

or to the security of the United Kingdom; and(iv) prior to his admission to the United Kingdom the person committed a crime outside the scope of (i) and (ii) that would be punishable by imprisonment were it committed in the United Kingdom and the person left his country of origin solely in order to avoid sanctions resulting from the crime”.

Now comes the stage if a criminal is wanted by host state and guarantee is given by way of Memorandum of Understanding that he will be offered ‘due process of law’ and ‘fair trial’ and will not be tortured and hanged, in that situation, can he be removed from UK, the answer is yes, though it entails a long legal battle on account of public money in the shape of legal aid heavy bills of lawyers. Now we come to the stage 2, in the event a person in question has become citizen, can he still be removed or stripped off his nationality. The law has changed rapidly in recent years and again it is in the power of Secretary of State to certify some one as ‘international terrorist’ offer him a trial in UK and or extradite him to face charges abroad where those crimes have been committed but a prima facie case needs to be made by Home Secretary, though his assessment is final once made and rarely challenged by highest courts considering him the executive in charge of public safety as mandated by public see the case of Rehman [2001] UKHL47. In that premises we need to see **S.21 the Anti-terrorism, Crime and**

Security Act 2001 which outline Home Secretary's powers and in order to determine what the parliament intended as to who is an international terrorist, the section says as **following,**

" 21 Suspected international terrorist: certification

(1) The Secretary of State may issue a certificate under this section in respect of a person if the Secretary of State reasonably-

(a) believes that the person's presence in the United Kingdom is a risk to national security, and

(b) suspects that the person is a terrorist.

(2) In subsection (1)(b) "terrorist" means a person who-

(a) is or has been concerned in the commission, preparation or instigation of acts of international terrorism,

(b) is a member of or belongs to an international terrorist group, or

(c) has links with an international terrorist group.

(3) A group is an international terrorist group for the purposes of subsection (2)(b) and (c) if-

(a) it is subject to the control or influence of persons outside the United Kingdom, and

(b) the Secretary of State suspects that it is concerned in the commission, preparation or instigation of acts of international terrorism.

(4) For the purposes of subsection (2)(c) a person has links with an international terrorist group only if he supports or assists it.

(5) In this Part-

"terrorism" has the meaning given by section 1 of the Terrorism Act 2000 (c. 11), and

"suspected international terrorist" means a person certified under subsection (1).

(6) Where the Secretary of State issues a certificate under subsection (1) he shall as soon as is reasonably practicable-

(a) take reasonable steps to notify the person certified, and

(b) send a copy of the certificate to the Special Immigration Appeals Commission.

(7) The Secretary of State may revoke a certificate issued under subsection (1).

(8) A decision of the Secretary of State in connection with certification under this section may be questioned in legal proceedings only under section 25 or 26.

(9) An action of the Secretary of State taken wholly or partly in reliance on a certificate under this section may be questioned in legal proceedings only by or in the course of proceedings under-

(a) section 25 or 26, or

(b) section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) (appeal)."

Now question arises can a citizen be tried and punished for crimes committed abroad and can his nationality be taken. Under s.7 of the British Nationality and Status of Aliens Act 1914, the Secretary of State had the power to 'revoke' a certificate of naturalisation granted by him if he was satisfied that it had been obtained "by false representation or fraud, or by concealment of material circumstances, or that the person to whom the certificate is granted has shown himself by act or speech to be disaffected or disloyal to His Majesty ..." This section was a corresponding section of the BNA 1948 was s.20

(deprivation of citizenship) and The deprivation provisions are now contained in s.40 of the BNA 1981.

“S.40 of nationality Act 1981 says as following, “[40 *Deprivation of citizenship(1) In this section a reference to a person's "citizenship status" is a reference to his status as-- (a) a British citizen,(b) a British overseas territories citizen,(c) a British Overseas citizen,(d) a British National (Overseas),(e) a British protected person, or(f) a British subject.(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that the person has done anything seriously prejudicial to the vital interests of-- (a) the United Kingdom, or(b) a British overseas territory.(3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of-- (a) fraud,(b) false representation, or(c) concealment of a material fact.(4) The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless. (5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying-- (a) that the Secretary of State has decided to make an order, (b) the reasons for the order, and(c) the person's right of appeal*

under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68). (6) Where a person acquired a citizenship status by the operation of a law which applied to him because of his registration or naturalisation under an enactment having effect before commencement, the Secretary of State may by order deprive the person of the citizenship status if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of-- (a) fraud,(b) false representation, or(c) concealment of a material fact.”

If one is British and or dual national then under s.4 of Nationality, Immigration and Asylum Act 2002 which amends earlier laws of Nationality Act 1981(s.40) empowers secretary of State for Home Affairs to deprive a citizen of his citizenship if the Secretary of State is satisfied that the person has done anything seriously prejudicial to the vital interests of the United Kingdom, on accounts of his activities which create danger to public good and or in the interest of national security. A fire brand Muslim Cleric Abu Hamza has been the first victim of this law when then Home Secretary David Blunkett told the media on 5 April 2003 that he has written a letter withdrawing his (Abu Hamza's) citizenship and said, “he wanted to deal with people who our intelligence and security people believe are a risk to us,” and he warned that, “*if you*

encourage, support, advise, help people to take up training, if you facilitate them, then, of course, that takes your right over the boundary,” and finally he said that he thinks, “ *it is reasonable that we should regard citizenship as a privilege conveyed to people who have not been born here, with which certain responsibilities should go*”. A person may be detained in accordance with Part 4 of the Anti-terrorism, Crime and Security Act 2001 and may be removed if alien and or tried in UK if citizen under Terrorism Act 2000 if he is involved in international terrorism. We need to look at s.1&4 of the Terrorism Act 2000 whether criminal activity abroad can be challenged under existing laws of the state in United Kingdom. S.1 of the Terrorism Act 2000 says as following,

“ 1 Forfeiture of terrorist cash

(1) Schedule 1 (which makes provision for enabling cash which-

(a) is intended to be used for the purposes of terrorism,

(b) consists of resources of an organisation which is a proscribed organisation, or

(c) is, or represents, property obtained through terrorism,

to be forfeited in civil proceedings before a magistrates' court or (in Scotland) the sheriff) is to have effect.

(2) The powers conferred by Schedule 1 are exercisable in relation to any cash whether or not any proceedings have been brought for an offence in connection with the cash.

(3) Expressions used in this section have the same meaning as in Schedule 1.

(4) Sections 24 to 31 of the Terrorism Act 2000 (c. 11) (seizure of terrorist cash) are to cease to have effect.

(5) An order under section 127 bringing Schedule 1 into force may make any modifications of any code of practice then in operation under Schedule 14 to the Terrorism Act 2000 (exercise of officers' powers) which the Secretary of State thinks necessary or expedient.

And S. 4 of Terrorism Act 2000 further says,

“4 Power to make order

(1) The Treasury may make a freezing order if the following two conditions are satisfied.

(2) The first condition is that the Treasury reasonably believe that-

(a) action to the detriment of the United Kingdom's economy (or part of it) has been or is likely to be taken by a person or persons, or

(b) action constituting a threat to the life or property of one or more nationals of the United Kingdom or residents of the United Kingdom has been or is likely to be taken by a person or persons.

(3) If one person is believed to have taken or to be likely to take the action the second condition is that the person is-

(a) the government of a country or territory outside the United Kingdom, or

(b) a resident of a country or territory outside the United Kingdom.

(4) If two or more persons are believed to have taken or to be likely to take the action the second condition is that each of them falls within paragraph (a) or (b) of subsection (3); and different persons may fall within different paragraphs.”

Now the issue is where a person seeks protection on the premises that his life is in danger in his country of origin, gets refugee status and nationality, can he be removed at a later stage if found involved in criminal activities or crimes against humanity, the answer is yes. If someone seeks protection and later uses London as a ‘safe heaven’ a shelter to spread horror and terror in the country of origin where he carries influence and his claimed ‘threat to his life’ no longer is relevant may be considered for prosecution and or removal from the United Kingdom. If his fire brand activities may create a serious threat to the British public in retaliation then Secretary of State has power to do the balancing exercise whether ‘interest of state’ is greater than the ‘individual rights’ as was held by house of Lords in the case of Rehman reported at page 47 [2001] UKHL and in that situation Home Secretary may take action firstly to deprive that individual of his nationality if because of his criminal activity he is required by an other state and or is involved in international crimes and also for his activities which poses a direct threat to British Public and create national security concerns. His activities may be directly relevant to British Home Secretary if foreign activity risks carrying retaliatory attacks at London at some stage in future by the victims and or severe criticism by democrats for harbouring such elements. Let’s put it this way if a religious fire brand, puppet leader or exiled politician campaigns in a negative way

which results in mass killing, **War crimes or** Acts committed at any time as part of a widespread or systematic attack, directed against any civilian population with knowledge of the attack. This would include offences such as murder, torture, rape, severe deprivation of liberty in violation of fundamental rules of international law and enforced disappearance of persons or,

Genocide, Acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. **Terrorist activities**, Any act committed, or the threat of action, designed to influence a government or intimidate the public and made for the purposes of advancing a political, religious or ideological cause and that involves serious violence against a person; that may endanger another person's life; creates a serious risk to the health or safety of the public; involves serious damage to property; is designed to seriously disrupt or interfere with an electronic system or,

Organisations concerned in terrorism, An organisation is concerned in terrorism if it commits or participates in acts of terrorism; prepares for terrorism; promotes or encourages terrorism (including the unlawful glorification of terrorism); or is otherwise concerned in terrorism, **that person involved in such activities may be removed, stripped off his nationality and extradited to the state where those crimes have been**

committed subject to some conditions. If the Home Secretary and International community remain silent on such acts, it will send a wrong signal to those oppressed and it may be considered akin to condoning those atrocities which may carry serious repercussions and retaliation against the British land itself. Now the question is who will bell the cat. To me world is closely knit into global village and media's role is greater than we ever envisaged. The images we saw in Karachi on 12 May 2007 poses a serious question to British Home Secretary whether any of such acts have been committed with the knowledge, aid and or protection of a leader living in a luxury life in exile on the premises that his life is in danger, and if those acts may jeopardise public safety of British Citizens and or risk carrying a retaliation in London and if the answer is yes then all those sanctions and prosecutions available can be materialised to avoid any attacks in Edgware before its too late. Britain at this juncture if neglects to check the perpetration of violence from 'London hub' directed at Karachi or some where else can not absolve its duty to protect British public if tomorrow that violence breeds violence and its effects come to the shore of London. It's time for British Home Secretary to act before it's too late.

17 May 2007

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Pakistan***

‘Is Modern World in Grip of Clash of Civilization?’

Britain is in the grip of latest stir caused by the knighthood status granted to ‘Satanic Verses’ fame writer Salman Rushdie which has created an uproar in the Islamic world though the stalwarts of Ummah are quietly observing these developments. Several organizations have expressed dismay at the blatant disregard shown to the 2 million Muslims sensitivities in the UK and over a billion around the world whilst granting a Knighthood to a writer and questioned the wisdom of Tony Blair for such recommendations on the occasion of Queen Elizabeth’s birthday and have called for withdrawal as this honour. This recognition is given at a time when Muslims are on the edge to bridge the gap between two communities after the events of September 11th and 7 July. Muslims of Britain as well as the Western World are already subject to victimization via various heavy handed laws and at this junction honouring those will contribute to widen the gulf between two cultures and will alienate the main stream Muslim community.

Pakistan Penal Code (PPC) of 1860 dates from the British colonial period: Sections 295 to 298 of the PPC dealing with religious offences dates back to that period and was intended to prevent and curb religious violence. The offences listed are: defiling a place of worship (s.295), acts insulting religion or

religious beliefs (s.295 A), disturbing a religious assembly (s.296), trespassing on burial grounds (s.297), and utterances wounding religious feelings (s.298). These sections have a lot in common including the intention of the offender to hurt the religious susceptibilities of others which is considered integral to the offence; they also share a universal application, whereby hurting the religious feelings or any group is made an offence. In particular S. 295-C of the Pakistan Penal Code says, “whoever by words either spoken or written or by visible representations or in any manner whatsoever, or by any imputation, innuendo or institution, directly or indirectly defiles the sacred name of the holy Prophet Muhammad (PBUH) shall be punished with death or imprisonment for life and shall also be liable to fine.”. Islamic Shariat Bench later declared that imprisonment can not be granted in Blasphemy proven cases and only death sentence is the right sentence for the convicted.

However these offences have little value to the West who takes freedom of expression as a superior force to all other political and religious compulsions. Their Blasphemy law though covers Christianity but does not cover Islam. Article 10 of European Convention of Human Rights 1950 which is a bit similar to Article 19 of the Constitution of Pakistan 1973 says as following: “1. Every one has the right to freedom of expression. This right shall include freedom to hold opinion and

to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the Licensing of broadcasting, television or cinema enterprises.” During the Salman Rushdie affair in 80’s after writing a book ‘Satanic Verses’ Britain never prosecuted Salma Rushdie under Blasphemy Laws of Britain for defiling the Prophet of Islam as British laws only covers Christianity. Under Ex Parte Choudhary, private prosecution was not allowed either by British Courts due to lack of legal provisions. Britain since has introduced the Racial and Religious Hatred Act 2006 which intends to curb preaching religious violence, however it still does not address the core and causes of igniting religious hatred albeit blasphemy .

However in the west denial of holocaust as to whether or not Jews were oppressed by Hitler’s Nazi regime is a criminal offence in most part of Europe. Holocaust denial is illegal in a number of European countries: In Austria (article 3h Verbotsgesetz 1947) punishable from 6 months to 20 years, Belgium (Belgian Holocaust denial law) punishable from Fine to 1 year, the Czech Republic under section 261 punishable from 6 months to 3 years, France (Loi Gayssot) punishable from Fine or 1 month to 2 years, Germany (§ 130 (3) of the penal code) also the Auschwitzlüge law section 185 punishable from Fine or 1 month to 5 years, Lithuania, The Netherlands

under articles 137c and 137e punishable from Fine or 2 years to 10 years, Poland, Romania, Slovakia, and Switzerland (article 261bis of the Penal Code) punishable from 6 months to 3-5 years. In addition, under Law 5710-1950 it is also illegal in Israel and punishable from 1 year to 5 years. Italy enacted a law against racial and sexual discrimination on January 25, 2007 punishable from 3 years to 4 years.

Now we see no Islamic countries in this list which outlaw holocaust denial as if you wish to enact the law in those countries you are called to scratch their back too and amend your home blasphemy laws to include the respect for Islam and its Prophet. Now looking at this tendency the way the West is showing insensitivity to the Muslim World's feelings, It will be quite illogical if Islamic countries in a fit start awarding Saddam Hussain a highest bravery award for saying 'God is one' on the Gallows or Mullah Omer 'the sword of Ali award' for combating the foreign oppressor. These sentiments though exist which call for serious consideration by OIC (Organisation of Islamic Countries) and West to sit together and find a solution to this hugely charged issue as common man of each society calls for peace and harmony between ancient civilizations.

The awarded writer's contribution is disputed too and it is not only conflicting but has caused hurt to scores of human souls around the world. British Government must have gauged the fall outs as a result of such an honour announcement and the assessment seems faulty over this knighthood and resulting reactions it and gives rise to the contention whether it is intentional to stir worldwide outcry to secure public support for aggression or an unintended lapse. Queen's office has already been insensitive to the public pulse at the death of Lady Diana, the princess of Wales and here too showing little regret over this episode where thousands of Muslim protestors are on the streets.

There is further fuel on the fire by careless statements of politicians, one of which is of Mr. Ejaz Ul Haq, a Minister of Religion of Pakistan trying to justify suicidal attacks on the writer which has no basis in Islamic teachings and in law here and abroad. In particular his call is not wise when 1 million Pakistanis reside in Britain and contribute heavily in national economy including some members of his own clan. Whilst urging communities to remain calm and use their right to protest in a maximum peaceful manner, I feel the time has come for two ancient civilization to sit together and try to form a group of countries to have a joint 'Memorandum of Understanding' to identify and not to allow harbouring each

other's common criminals who defile each others religious faith. Prophet Muhammad(PBUH) did something similar 1400 years ago and made a pact with his opponents known as 'Huddabiyah Pact' and here too the Western world must have a dialogue to secure interfaith harmony in order to bring two extremes to the middle to avoid future conflict.

There is no point that blasphemy law in Pakistan, Iran and Saudi is punishable to death and writers of such books walked free in British run India for writing 'Colourful Prophet' around 100 years ago, and now for writing 'Satanic Verses' and publishing 'Danish Cartoons' ridiculing the Prophet. Similarly denying holocaust, that Nazis did or did not oppress the Jews, is a criminal offence in the West but in the Islamic world if not penalized then it does not carry international validity and criminals of one society will keep seeking refuge in other's protection indefinitely and may cause a mayhem one day. If a joint attempt to 'give and take' policy is not adopted, I am afraid a chain of uncalled events may emerge from within those episodes which will be regrettable but will be disastrous to the efforts of bringing the unity in this global village. When law does not address public anxiety and no forum on which a complaint can be lodged is available then those who mutilate public feelings on the name of freedom will deepen the gulf further and clash of civilization begins as was quoted by the US

president wrongly or rightly at the time of 9/11 referring his actions to crusades.

We must all discourage any attempt to use or stir violence on religious basis, however realizing the nature of situation OIC and Western World including European Union, US, Russia, China, and India must consider setting up a forum to adjudicate such matters and give serious thought to the calls of Muslim countries & West for interfaith harmony. Islamic countries jointly must come up with a unanimous unstinted resolution as to where no negotiation is possible and where there is a room for compromise possible on the name of freedom of thought and expression and or to include protection to Western belief. Little late and there was no dearth of individuals like Ghazi Ilam Din then in India, or Amir Cheema now in Germany, in this day an age who were and are willing to take law into their own hands on the name of love for their religion and their Prophet when no law or legal forum is available to address their concerns instead countries show blatant disregard to their sentiments. The decision is simple, its one man's freedom against 1.5 billion Muslims sensitivities. Muslim world unanimously banned the film 'Passion of Christ' which fantasized Jesus Christ in a fiction, same reciprocal concession must be offered from the West which does not cost them a penny. Why both societies do not act together to fill the lacuna

so that any frenzy writer may not stir religious sentiments and defile each others sacred belief as current law does not address those common grouses of each community. This way we can save the clash of civilization and nip the evil in the bud in order to save the humanity as one man's unnatural death is the death of the whole of humanity.

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‘Rushdie: Old Book with New Cover (a critical analysis)’

The law of blasphemy finds its roots in the Ten commandments and if we also see Exodus, Chapter 20 Verse 7, The Holy Bible, (Revised Standard Version, Thomas Nelson and Sons Ltd, London 1952) which says that: ...*"you shall not take the name of the LORD your God in vain"* This, like other Christian doctrines, became enshrined into the law. In the past the new connection between the Church and the State was an important one. Religious dissent and political subversion were closely linked: unity in religion meant strength in the State. Thus, to reproach Christianity was to speak in subversion of the law. This link was borne out in the blasphemy law.

Islam has given the message in the clear terms too as well as Christianity. " No, doubt those people who torture God and His prophet (PBUH), there is a curse on them, not only in this world but in the next world as well, and God has ordered the worst punishment for them" (Sura ul Ehزاب (AL Quran).

Issues of ridiculing Muslim faith is not rare, its old story emerging with new cover. After the downfall of Moghuls, British Empire emerged and in 1860 Governor General Hind approved the enforcement of Indian penal Code. Before that Islamic laws were enforced in the whole of the country. Indian Penal Code was prepared by a commission headed by Lord

Macalley. English laws and administrative provisions were kept ahead whilst considering this code. Blasphemy Act was still part of British common laws but it was not included in Indian Penal Code. But one section was added in the code to set punishment for insulting, spreading hatred against British government. In 1898 section 124A was slightly changed but punishment for the offence remained the same. Same year including 124A one more section 153A was added to curb the racial violence in the colony. S.153A was to punish people if they try to stir racial hatred. S.153A- read it *"whoever with the deliberate and malicious intention, by words, either spoken or written, or by visible representations stir up the racial hatred amongst the classes of the subjects of her Majesty, shall be punished with imprisonment....for a term which may extend to two years, or with fine, or with both"*. One main purpose for this section explained at the time was to keep peace between the groups and classes of the subjects.

Several cases of Blasphemy against prophet were registered under the same section during that period. Out of all, the most famous case was registered against a publisher "Raj Pal". Raj Pal published a book "Rangeela Rasool". Case was registered against him under section 153 of Indian Penal Code as a result of several protest and complaints by the local and national Muslim organisations. Session court Lahore found him guilty

and sentenced him and Raj Pal appealed against the decision of Session Court in the Lahore High court (AIR 1927 LAHORE 250). Appeal was heard by Judge Daleep Singh in The Lahore High court who gave leave to appeal on the grounds that on the basis of criticism against the religious leaders, no matter how immoral it is, is not covered by S.153 of the Indian Penal Code. Therefore, Raj Pal could not be sentenced as law did not cover blasphemous criticism against religion. High Court decision was widely criticised and protests were made against it by Muslims of India. All these protests and agitation resulted in Raj pal's death. A Muslim Ghazi Ilam Din killed Raj Pal on 6th September 1929. Ghazi Ilam Din was sentenced to death in late 1920's by Lahore session court. Appeal was lodged which was conducted by Mohammed Ali Jinnah to challenge the decision on the basis that it was not an intentional murder and death sentence can not be given. Appeal was heard by Justice Broadway and Justice John Stone and on 17th July 1929 appeal was dismissed. Further appeal to Privy Council was refused too and at last Ghazi Ilam Din was sentenced to death. That was the turning point towards demands of the Orthodox groups of Muslims for strict laws to protect religion and to introduce severe punishment for blasphemous acts which gave birth to the future blasphemy law in Pakistan.

British government reacted quickly over the racial incidents in India and especially over the misinterpretation and explanation of law by Judge Daleep Singh *and added a section 295A under the Criminal Law Amendment Act 1927 and added it to Indian Penal Code*. Since then 295-A apart from minor changes by Pakistan Constitution of 1956 remains the same. S.295-A reads *"whoever with the deliberate and malicious intention of outraging the religious feelings of any class of citizens, by words, either spoken or written, or by visible representations insults the religion or the religious beliefs of that class, shall be punished with imprisonment....for a term which may extend to two years, or with fine, or with both"* The same law was amended by Pakistani regime in 1986 where more offences were introduced and punishment was increased to death and life sentence.

In 1991, Abdul Choudhury sought summonses against Salman Rushdie and his publishers, Viking Penguin, alleging that the publishing "The Satanic Verses" they had committed a blasphemous libel against Islam. The magistrate refused to issue the summonses, on the grounds that the offence of blasphemy was restricted to the Christian religion so was the view of higher courts. The Prophet Muhammad (PBUH) is the Muslim role model. All the aspects of his way of life make up the Muslim identity. In "The Satanic Verses" the Prophet is seen to

make up revelations, which are little more than convenient excuses, which enable him to lead his sexually frivolous lifestyle. In one scene, the Prophet was rumoured to have had an argument with one of his wives which was unacceptable to Muslims world. The outbreak is consistent as they expressed dissent at the time of broadcasting the film 'Passion of the Christ'. It is understandable that many Muslims felt that Salman Rushdie had taken outrageous liberties with their faith. When the Muslim community tried to invoke the blasphemy law to protect their faith and found that it protected Christianity only, they felt powerless victims of religious discrimination.

Whilst granting Knighthood to Rushdie for literary service British Committee forgot to appraise his book fully as well. For example little glimpse of his book 'Satanic Verses' shows how Rushdie fooled the West and in return Britain awarded him for his ridicule. The writing may be protected by West on the name of freedom but is not literary master piece on any moral standards. For example:

- The word 'Fuck' has been used total 60 times in the book at following pages: 27, 54, 80, 87, 100, 101, 109, 149, 158, 159(2 times), 163(2 times), 178(3 times), 179, 180(2 times), 207, 245, 260, 261, 262, 265, 268(6 times), 269(2 times), 270(4 times), 271, 278, 285, 306,

313, 351, 380, 410, 412, 421, 429, 430, 435, 441(6 times), 448, 479, 526.

- The word 'Bastard' has been used total 49 times on the following pages: 1, 8, 19, 51, 56, 59, 68(2 times), 73, 80(2 times), 86, 95, 105, 116(2 times), 122, 137(3 times), 142, 164, 169, 174, 198, 256, 259, 266, 268, 280(2 times), 281, 284, 285, 316, 326, 359, 367, 376, 418, 425, 430, 436, 448, 467, 511, 520, 537, 539.
- The word 'Cunt' has been used total 6 times on the following pages: 163, 389(2 times), 441(3 times).
- The word 'Haramzada' (bastard in urdu) has been used total 2 times on the following pages: 27, 207.
- The word 'Mother Fucking' has been used total 3 times on the following pages: 80, 85, 122.
- The word 'Sister Fucking' has been used total 1 times on the following pages:80.
- The word 'Chootia' has been used total 1 times on the following pages: 80.
- The word 'Maggie the Bitch' has been used total 1 times on the following pages:269.
- The word 'Damn all Indians' has been used total 1 times on the following pages:137.
- The word to describe UK as 'Coffin of an Island ' has been used total 1 times on the following pages:146.

- The word 'Mother Fucking Americans' has been used total 1 times on the following pages:80.
- The word 'Sister Fucking British' has been used total 1 times on the following pages:80.
- The word 'Angrez Bastards' has been used total 1 times on the following pages:59.
- The word 'White Bastards' has been used total 1 times on the following pages:284.
- The word 'Shiv Sena Bastards' has been used total 1 times on the following pages:537.
- 'Nigger eat white man's shit' has been used total 1 times on the following pages:461.
- 'White woman never mind fat Jewish, non-deferential white women – were for fucking and throwing' has been used total 1 times on the following pages:261.
- Remarks about Hindu Gods: On Page 24 “After six movies playing the elephant headed god he was permitted to remove the thick, pendulous, grey mask and put on, instead a long hairy tail, I order to play Hanuman the monkey king in a sequence of adventure movies that owed more to a certain cheap television series emanating from Hong Kong than it did to the Ramayana. This series proved so popular that monkey-tail became de rigueur for the city's young bucks at the kind of parties frequented by convent girls known as

'firecrackers' because of their readiness to go off with a bang.” Further on page 25, “ ‘Even before he replaced false head with fake tail he had become irresistibly attractive to women. The seduction of his fame had grown so great that several of these young ladies asked him if he would keep the Ganesh-mask on while they made love but he refused out of the dignity of the God’.

- Remarks about Queen on Page 169, “... he found himself dreaming of the queen, of making tender love to the Monarch. She was the body of Britain, the avatar of the State, and he had chosen her, joined with her; she was his Beloved, the moon of his delight”.

There are far more verses which are inflammatory which can not be pen down due to various obvious reasons, but to any standards this does not seem a service to literature, I could not find any sarcasm or irony or satire in this fiction for which British writers are popular all over the world rather found filthy fire and looking at this synopsis this book is a fine example of stirring hatred against the whole of humanity.

Now The Prophet (PBUH) further said, “A believer does not taunt, curse, abuse or talk indecently.” Al-Tirmidhi Hadith 1740. When rulers are ignorant of sensitivities and no forum to express anger or to bring some one to justice or there is no law

to curb such hatred then there is little left to accommodate such grouses. Britain ignored Muslim sensitivities in UK and billions around the world whilst granting Knighthood to ‘Satanic Verses’ fame writer Salman Rushdie for services to literature. The awarded writer’s contribution is disputed too as it has not only hurt Muslim sentiments but have attacked African community and his one sentence got the book banned in South Africa, It ridiculed Hindu belief and used foul language against then PM Margret Thatcher and the Queen and his contribution is not only conflicting but has caused hurt to scores of human souls around the world. The writer has one fame which is that his book got a lot of publicity for hatred against Muslims and vice versa. As compared with this Harry Potter fame J K Rowling and Mr. Bean fame actor writer Rowen Atkins could have been far better candidate for such a worthy honour and Knighthood for their service to literature.

British Government must have gauged the possible reaction as a result of such announcement and the assessment seems faulty over this knighthood. Many organizations are urging the Prime Minister to fill the legal gap so that any frenzy writer may not exploit this weakness himself or on behalf of hidden forces in future to widen the gulf between those communities who in general wish to remain in peace and may not stir religious sentiments and defile each others sacred belief. Few option

have been highlighted all around which preach common sense and are as following a) withdrawing and or suspending the grant of Knighthood to Mr. Rushdie: b) Consider amending blasphemy laws and or give effect to Race and Religion Hatred Act 2006 (relevant clauses) thus granting protection to all beliefs including Muslims from such outrageous ridicule: and c) Increase efforts to hold a dialogue between OIC & EU, US, China, India and representative of major faiths for better understanding amongst over 6 billion souls and inter faith harmony and secure 'memorandum of understanding' to avoid public protest over either its 'Raj Pal' or 'Danish Cartoons' or Rushdie's 'Satanic Verses' Or 'Passion of Christ' affair and or 'denial of holocaust' as lack of such understanding will continue manufacturing those writers at will who will cause harm to public harmony. Those factories must be stopped with political will and community consultations.

The decision is simple; West must not crucify 1.5 billion Muslims over one man's frantic freedom of expression which has no limits. Unbridled fire sometimes burn one's own hand's and the argument makes it clear that his freedom is restricted to where Muslims rights guaranteed by international law triggers. The rights come with responsibilities. The rulers must always be able to gauge the pulse of their people and I must say people does not wish for any confrontation on either side and seek

peace all around. There is still time to secure those efforts for interfaith harmony amongst ancient civilization in the light of old practices or teachings before it causes irreparable gulf.

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‘Amnesty for illegal immigrants’

I read the statement of British Home Secretary John Reid’s junior in home Office earlier where they have shown willingness to introduce the following measures: 'Watch list' of people not entitled to public services, Enforcement teams to track down bosses employing illegal workers, Compulsory ID cards for foreign nationals, Text alerts for people overstaying visas, Possible £20,000 fines for landlords housing illegal immigrants, Remove driving licences, Pilot schemes to use ID card data to ensure migrants pay for NHS care. On top of it introduction of Police force to combat human trafficking as well as increase of around 100% in visa fees has rocked the capital as far as Asian community is concerned.

Many lawyers I spoke this week are of the view that British Home Secretary John Reid must consider ‘Amnesty’ for around 1 million illegal migrants are living and working in Britain illegally and are living below poverty line and may not return due to reprisals in the country of origin. They are working on very low wage and are living for over a decade here in UK. In some instances people are working long hours and seeking refuge at the door steps of churches and charities like Oxfam, as they have nothing to eat and no home to go back.

Introducing legislation without gauging the results of previous one's is a dangerous tendency. Post 9/11 War on Terror, Iraq war and then tightening terrorism laws on the name of national security have already cost community cohesion a huge set back. On top of that frequent statements on Immigration, migration and on people from ethnic origin has added fuel on fire and immigration issue has taken a permanent corner in our British tabloids and being used as a political rhetoric to score political points especially near elections for the last whole decade.

New announcement and policy will not crack down illegal migration unless John Reid addresses the real issue, which is current backlog of estimated 1 million existing failed asylum seekers, overstayers, and families with children living in Britain for several years. Migration watch estimates the figure 870,000 though Home Office accepts around 570,000 which is by being economical with the truth. As there is no actual agreed figure and no study to accumulate such data therefore my estimate is a challenging one for Home Office which is under strict scrutiny and political pressure now a days.

The estimated figure of legal migration is well over 1.5 million that has come to Britain post 2004 and they are contributing to national economy and migrants bring rich culture and diversity

with their arrival to this multi cultural cosmopolitan society. Migrants who came to UK include work permit holders, workers from accession states, general migrants and Highly Skilled Migrants & professionals and successful asylum seekers and their families. If Home Secretary is serious to put the house in order, he will have to take bold decisions. If he wishes to reduce the estimated 20 billion fraud losses to financial institution, he will have to give serious thought to the projected figure of 2 billion revenues which could be generated in revenues if the back log is legalised. Of course with this in mind 20 billion figure will be halved if people are not living illegally and are identified rather than living like 'ghosts' in 'ghettos' underground. It will also save public purse of his intended 200 million half of which he wishes to invest on texting overstayers to leave UK, and people who are not willing to leave will not be waiting for his text message to make up their mind, to voluntary depart from UK.

This new measures are an 'eye wash' when Home Office is saying that it is removing failed asylum seekers more than ever is also challengeable as (IOM) International Organisation of Migration is advertising £3000 per person to leave voluntarily and there is no figure to suggest which one is paid departure and which one is by force and how many are coming back after being returned using the same money, as the human traffickers

are still on the loose to end people on forged documentation. Furthermore, it will be very difficult to secure prosecution against landlords to give their houses on rent to those whom Home office has failed to remove. There is also an obstacle of human Rights implications as Britain has not signed MOU's with most of the gulf, Asian & African states as well as states where torture is used as a tool to extract confession therefore, whilst it is ideal to support plans to curb 'human trafficking' as well as devising a 'watch list' of unwanted and those who must go but on the other hand it is sensible to address the issue in hand of the pile of back log cases at our door step which will affect all projections and plans of British Government.

To me, that is the only way that half of the measures he is suggesting will automatically be addressed, people he is tracing with text messages will automatically be willing to register if there is an incentive available. US did so as other European countries in the past offered relief to address the issue of illegal working and migration. Those who will be allowed to come up and register, they will work on books and contribute to national economy and pay national insurance and tax plus they will learn language and culture openly and freely to qualify for permanent stay after total 5 years of legal stay. This way home secretary will have his data, he does not have to text and on top of that he will bag 2 billion generated in

respect of revenue. I feel the ideal way to deal with this issue is to spend the same money of £200 million on accommodating the ones who are already well knit in the system in UK rather than spending on cracking down illegal immigrants whom he has failed to remove so far. This will also preserve the community relations at sensitive times which have been tarnished already by increase in police powers in relation to ‘stop and search’, policy of ‘shoot to kill’, and recent increase in ‘terror raids’ all around Brian to catch the unfounded fear and few rotten eggs.

It is need of the hour that Home Secretary consults his counterparts to grant ‘General Amnesty’ and grant working visas for 5 years to enable the people who are lost in figures to come out of back economy and contribute to British economy legally and work on the condition that they register themselves within certain grace period and have no criminal conviction. This will save Home Secretary of announcing another policy in 6 months and 2 billion revenue funds in top.

09 March 2007

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‘Overseas Pakistanis and Their Realigned Targets’

Overseas Pakistanis rightly raised voice for effective return of two exiled premiers to Pakistan and now the time has come for this minority in Pakistan to rethink and avoid further division at foreign lands. Pakistanis are Pakistanis whichever shape, form and colour they are and due to existing geographical and ethnic cosmopolitan diversity, there is a little room to further alienate them by painting them as pro PPP, PML Pakistanis and it may not be ideal that Overseas community link sending their remittances only once the party of their choice forms the government. Having said that it was just and fair to continue to supporting civil society, media, lawyers & Pakistani politicians in the drive for democracy and for restoration of Constitution once the politics was in exile, and the struggle was justified to assist the return of their beloved leaders to their homeland to continue their politics at home soil, but time has come that now the exiled have returned and Constitution is going to be restored along with an electoral schedule, the Overseas Pakistanis return to their original cause too and contribute in making Pakistan standing in the community of nations as a vibrant, progressive, tolerant and democratic state with rule of law & justice with free and responsible media as its salient features. That’s the dream our founding father Barrister Mr. Jinnah saw for the Muslims of subcontinent.

Over 8 million overseas Pakistanis have a major role to play in the development of the country of their origin. They must take part in local political parties and increase their representation in all houses of parliaments and civic centres, so that their local problems of employment, discrimination, housing, education and fair representation can be raised at the highest level here in UK. It will also help their country of origin too if they are stronger in those houses of Parliament in the time of need as was the case on 8th of October 2005 when an earthquake wiped many lives in Kashmir and Balakot in Pakistan and British Pakistani members of Parliament assisted UK Government to raise their aid & assistance from Lakhs to millions. With the population they have in UK alone, the average seats in Parliament could be over 25 which currently stands at around 5. The figure is very high as far as Jewish population is concerned though they are little in numbers as compared with us. Secondly, Indian, Chinese and Jewish community do not have their party representations in overseas though all 3 communities too rely on the assistance of their overseas brain economically and intellectually and the level of nationalism is very high in them too. Overseas Pakistanis must take part in activities of OPF (Overseas Pakistani foundation) Pakistan Society, Pakistan welfare Association and all charitable organisations to contribute in society here and abroad positively.

Overseas Pakistanis who send billions of dollars and pounds in foreign exchange to economically aid their country of origin face numerous problems when they live abroad and attempt to visit Pakistan such as Passport renewals, visa & Immigration, airline facilities and ticketing problems, buying & selling land and its transfers & following illegal possessions, Vote Registration & and repatriation dreams. Problems vary in nature from one place to another. They always consider returning home for their old age at some point of their life but feel unwelcomed by the bureaucratic chain. That trend needs to be changed along with fuller cooperation from consulates and High Commissions truly making them public servants thus engaging the indigenous community irrespective of their views and encouraging them to a dialogue on shared objectives and giving listening ears to their problems. Currently opposite view is non existent in our missions abroad. Criticism to bring about positive change is a sign of healthy society and that positive feed back needs to be given frequently on services, image building and relations with host country and the idea of target based performance needs to be encouraged at all levels.

However, all this requires a political package too, and over 8 million Overseas Pakistanis abroad and in particular around 1 million in UK (should be given a voice at the highest levels & forums, to start with a right to vote & designated seats in both

houses of Parliament which will prevent them from indulging in politics back home, and it will allow them to concentrate on feeding in their healthy suggestions & representations to their designated representatives who are of Pakistani origin in the houses of Parliament as their chosen, designated or specially appointed representatives as is the case in many countries and in particular the formula is successfully working in Azad Kashmir.

In UK British overseas citizens (White Community) enjoy a right of vote which they exercised by post for many years from Hong Kong, Australia & Europe. Overseas Pakistanis enjoyed their right to vote in the Presidential referendum too in 2002 through foreign missions. Representation at Parliament will bring diversity blending it with mixture of knowledge, skill and public voice from overseas as Pakistanis abroad are hard working and value their motherland often more than their counterparts. In 2002, Musharraf Govt. gave women their rightful share in the makeup of national assembly and now is the turn for Pakistani population abroad whose financial contribution in Pakistan's development is without doubt the biggest in respect of foreign remittances. This will change colour and atmosphere of national assembly and will encourage ex patriots to contribute in national politics through a proper channel rather than indulging in national politics sitting abroad.

Overseas Pakistanis should also be given due representation opportunity on the representational board of Overseas Pakistanis Foundation (OPF) and they should be accommodated as non executive directors of OPF and members of council of OPF too. This way they could truly bring in their first hand experience to the knowledge of OPF and Overseas Ministries with their experience from their respective country and geographical location as problems faced by an overseas Pakistani in gulf is quite opposite to the issues confronted by OP's in Western World and only opportunity to be represented at those legislative forums could be the way out to address their multi dimension problems and allow to make those bodies truly representational & functional which will help overseas Pakistanis to make proper representations on matters of mutual concerns to the right people at right forums, the representations at the moment goes under the carpet.

Overseas Pakistanis are dying to contribute in their country of origin from investment to increasing commercial exports and from tourism attraction to building the image of Pakistan around the globe along with contributing financially but a befitting response is necessary to allow this one way traffic of love to make it dual carriage way as since 9/11 Pakistanis abroad despite all hardships continued supporting their

homeland and are waiting for an affectionate hand on their shoulder by elders of state saying ‘well done’.

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‘Immigration Law, Lawyers and ‘Per Se Caution’

Immigration Law has not escaped the eyes of readers, voters and leaders in the last decade. It ranges from asylum, terrorism to various migration methods which has been the centre of political as well as public debate.

One thing which could not get worthy importance and attention is the ‘immigration practitioners’ who are assessed for competency, targeted, trained, in some instances harassed till they call it a day. Today we are writing about those prestigious and precious members of this honourable profession who are still determined, and adamant to carry on with their lonely voice in the majority.

Immigration has not changed much as much as Immigration acts have recently, however, by the time lawyers get a grip of things and learn to handle, there comes a new Act and David Blunkett’s idea of controlled liberty has not done much good either for free rights. Several foreigners are pleading their innocence until proven guilty but of no avail. Executive’s discretion is limitless touching the skies and Justice is far away.

New Asylum scheme is bitter, Lawyers are asked to complete cases in limited hours as per Legal Services Commission

requirements and very limited firms are willing to continue that sort of work as it is not cost effective, as it brings liability and is not profitable at all. LSC is stricter and lawyers are shrinking as a result in the immigration law field. Lord Chancellor's department at one point used to advocate and increase more legal aid work in that field but that department's quietness is not understandable.

Immigration Directorate has not left behind in this marathon and has started charging fees considering Immigration as a lucrative business, now children under care, dependant mothers of British Citizens fallen ill and people with disabilities are asked to pay fee of around £155 to £250 if they wish their application to be considered at all. No fee, no answer, in fact it seems they are working on the maxims of 'no pain no gain'.

Finally, Practitioners who could escape OISC, get through panel accreditation, passed their CPD and exams, and are now subject to more rigorous accreditation. Now if you wish to continue, rather than looking after client account, office account, personnel, health and safety compliance, LSC audit compliance and all other bits and bats but just go for accreditation. If you pass you start working in Immigration field afresh, unfortunately if you however fail, then don't even think they will not find you. Even Law Society membership is easier

then to practice immigration under the umbrella and funding of LSC.

In 1999 when I was conducting first appeal of Special immigration appeals Commission, I was young energetic a fresh arrival in this profession. We fought that case as a legal battle and fought till end until House of Lords, of course, pro bono as no legal aid was available for SIAC cases. We went till House of Lords, a lot of sleepless nights, weekend work, briefs, opinions, and even taking Lord Chancellor to Court of Appeal for legal aid [**In 1999 R v Lord Chancellor [1999] Ex part Rehman (unreported), Times Law Report on the 8th July 1999**]. Despite several unsuccessful efforts legal team never lost heart and continued struggling for fair justice to obtain funding in not only his outgoing remitted appeal case of Rehman before SIAC but other cases as a matter of policy. All these efforts along with the efforts of colleagues from the legal circle brought fruit when Government announced to include extension of legal aid in SIAC proceedings under s.116 of the new Immigration and Asylum act 2002.

When I look back, I wonder whether under the circumstances can I redo the whole case, the answer is instantaneous and is 'no' as the stigma which is attached to lawyers working day in day out in the most sensitive cases around the world is greater

then ever before and Britain is not behind in this feeling of insecurity for lawyers.

Fundamental human rights are clouded under political policy matters of public importance where some or all of our human rights may be subject to strict control of our Home Secretary and with unlimited restrictions. I sometime, myself can not read between the lines, as it bottles down to 'no rights' and if you are good boy you do not need to advocate for one, as you have no fears. That is not what we learnt at our schools, and that is not why we are in this profession. We are here to stay, work hard for the principle of mankind and fight tooth and nail for 'justice as seen to be done' and in a manner preserved and enshrined in the Holy Scriptures, Laws of land, customs, Conventions and in accordance with rules of natural justice.

Despite all the difficulties, the day we loose that spirit, on that very day, we do not deserve and justify being the members of that honourable profession. We must not leave standing for principles of equality, justice and fairness for which our forefathers fought wars for centuries.

**Article published in British Pakistani Law Council
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Chapter 5

Press Releases, Correspondence and Interview

**‘Letter to General Musharraf Re:
Chief Justice Issue’**

Monday, March 12, 2007

Our Ref: AM/2007/aplPrivate and strictly confidential

His Excellency Gen. Pervez Musharraf

President of Islamic Republic of Pakistan

President House

Islamabad

P A K I S T A N

Fax No : 0207-664 9294

Email: messages@presidentofpakistan.gov.pk

Dear His Excellency Mr. President General Pervez Musharraf,

Representations re: Chief Justice

Assalam o Alaikum,

With reference to the above, I am a life member of Supreme Court Bar Association and & a Solicitor-Advocate of the Supreme Court of England & Wales and a chair of Association of Pakistani Lawyers (UK) and on behalf of Pakistani community in Great Britain I am making the following observation and representation(s) on the current prevailing

situation in Pakistan due to a reference filed with Supreme Judicial Council against the current Chief Justice of Pakistan on the 9th of March 2007.

His Excellency, I personally am in favour of judicial activism when government of the day fails to deliver truly the relief people deserves, however, unconstitutional means follow when constitution fails to address the real issues and I foresee just that, a trail of, further unconstitutional action(s) which may be in the offing and can trigger any time due to Iran conflict on our borders.

In the current geo political situation in the country, The President must consider an option of reconciliation with Chief Justice and he has by tonight to facilitate a meeting with CJ as on 13 March 2007 CJD starts its contemplation over the charges against Chief Justice and it will be too late by then. Government with Steel Mill Judgment, land grabbing mafia, sugar and cement crisis, continuous stock exchange crash(es), and Nabbed' ministers amongst their ranks will struggle to prove beyond reasonable doubt the issue of misconduct and abuse of power especially when they themselves drive bullet proof cars at public expense. However current situation desires all heads of constitutional tracheotomy to observe extreme patience and

wisdom and they be visionary to avoid conflicts which have serious repercussions for the state of Pakistan.

Mr. President, you as being the supreme commander of armed forces as well as, head of state must be extremely & extra ordinarily patient and cautious as your words carry a lot of weight and things will be turned up side down on the twitch of your hand. But one Constitutional department twice may not bear the brunt as was in the case of Jehangir Keramat the outgoing COAS, so may be in the current case, and judiciary as a department must be saved from unnecessary rows.

Current Chief is no threat to the President and or army, past record speaks for itself from incidents like CJ waited for 30 minutes in a queue to say good evening to the President at the ‘Wattoo’s’ wedding, attending your camp office to present report about SC annual progress, clearing backlog of 20,000 extra cases, setting up human right wing in SC to bridle unlimited powers of police in judicious manner, no major constitutional decision against army chief on his uniform and its expiry or president’s dual status, or no challenge to 17th amendment in his tenure, and no condition of ministerial resignation in ‘steel mills’ reference case show that the said Chief has the capacity to work with you and your government

and have never intended to confront you or army, in fact, he was more deadly for opposition than his predecessors.

I myself am a witness of the fruit of pro active judicial work when Chief Justice last year upon my request asked Inspector General of Police (Punjab) to register a case of murdered woman in Gujrat upon the request of her elderly parents over 70 years of age living in UK. The girl was brutally bruised and killed and later was buried without her parents present by her ex-husband. Even after Chief's intervention FIR was registered good 6 months after her death. Though they still did not get trial or complete justice but this gives the state of play in Police run Punjab. We can not punish him for the good he intended to do in the country and he genuinely did some of the good things in the country which your advisors sometimes are reluctant to tell you. President must not let media and others to reap from this constitutional crisis which will be disastrous for Pakistan as a state and which will turn the Chief into a messiah, for whom the nation has already been waiting for four years .

Mr. President, I feel that you must consider meeting the Chief Justice on 'one to one' tonight and assuring him to try to settle the internal disputes amicably. Restore Chief's position and privileges and bring him out of said 'house arrest' and allow him to meet whoever he wants and consider the option of

withdrawing the said reference if government is willing to request the President in the supreme national interest. If you do that, I assure you that the working of Supreme Court will resume as normal from Wednesday the 14th March.

However, if you decide against my request, then I feel it will make our country a laughing stock in the west, the trailer of which is visible from today's protest where one of senator is all covered in blood on the front pages of English media. We will be ridiculed when our dirty laundry is washed by our own self in front of the entire world.

That is your decision; however in any event if your decision is against in that case, allow the chief justice the right he deserves at least to have a fair hearing against this reference. Chief Justice deserves a due respect and proper treatment to have his legal team for consultation and advice and unless Council decides otherwise, all the privileges he deserves in the remit of constitution. At least Chief deserves the honour to have a fair hearing and at all times, he must be treated with respect, even enemies in battlefield are given proper funeral & burial. Media trial must end here, now Chief Justice is a victim of his own deeds good or bad and let the council decide on 13th the future course of business.

I will just mention here a lesson of history though, we tend not to learn the lesson(s) of history and forget them quickly. Around 400 years ago The Queen of England tried to subdue her Chief Justice Mr. Coke and people resented and took to street until that sacking was off, and later people elected him as Member of Parliament from the same Constituency. I still time to hold the last nail in the coffin which will portray you wiser otherwise; the nation is ready to hug another martyr of fate.

I expect your speedy action on this issue as personalities are not higher than national interest and sometimes, one ought to show leniency for supreme national interest, may be things would have been better, if you had met the Chief without any executive present.

Yours faithfully,

Amjad Malik, MA, LL.M

Solicitor-Advocate of the Supreme Court of England and

Wales

Chair Association of Pakistani Lawyers (UK)

Open letter to Justice Rana Bhagwan Das

March 24, 2007

Your FCO Ref: FCO Pro Bono Panel/suo moto/larger bench
/2007

Lord Justice Rana Bhagwan Das

Acting Lord Chief Justice of the Supreme Court of Pakistan

Constitution Avenue, Islamabad

Supreme Court of Pakistan

Islamabad

Pakistan

Section Lines # 9220581-9220600

Fax # 9213452

Email: scp2000@isb.paknet.com.pk

Dear Honourable Lord Justice Mr. Das, the Acting Chief Justice
of Pakistan,

Re: Chief Justice of Islamic Republic of Pakistan

We at the Association of Pakistani Lawyers (APL) along with
fellow English Judges & Solicitors of the Supreme Court of
England and Wales as well as members of respective regional
Bars and ex pat members of APL refer to above and we jointly

express our deep sorrow and dismay at the unconstitutional dismissal of Chief Justice, making him the extinct and rare position of 'non functional' and filling a mala fide reference against him on 9 March 2007, as well as the 'ill treatment' of current Chief justice Iftikhar Mohammed Choudhary at the hands of local police on the 13th March 2007 as well as his continuous detention of which Lord Justice Iqbal took a *suo-moto* notice and we all appreciate and welcome this gesture of good will towards your lordships fellow brother Judge.

We all jointly appreciate in the highest terms of the Lord Chief Justice Iftikhar Mohammed Chaudhary's unprecedented determination to face allegations against him at SJC and not to resign from his constitutional position. English media declared it a 'Judicial Error' as was the editorial in The Times newspaper (London) on 14 March 2007 at the following link: http://www.timesonline.co.uk/tol/comment/leading_article/article1511796.ece

We all are agreed on one point and are in favour of judicial activism when government of the day fails to deliver truly the relief people deserves, however, unconstitutional means follow when constitution fails to address the real issues and we foresee and fear a trail of further unconstitutional action(s) which may be in the offing and can trigger any time due to foreign interest

in our country and request the Acting Judge to be ready to face the challenge to preserve rule of law and superiority of the Constitution of the Islamic Republic of Pakistan 1973.

We jointly request your Lordship's intervention and consideration in order to initiate a full scrutiny of the above matter by forming a full bench consisting of all Apex judges in SC within a limited time frame to ensure proper scrutiny of Article, 209 and ensuring justice with the sitting Chief Justice of Pakistan. We are assured by your court as always and by previous incidents that 'Justice will be done in this matter as was in the case of Mukhtara Maee, Sonia Naz, victims of Basant and missing people, trial(s) of which are pending.

My Lord, We all jointly request your worship to consider the following:

1. Whether the term 'non functional' Chief Justice of Pakistan is Constitutional, can it be applied to Sitting Chief justice of Islamic Republic of Pakistan. If it does, where this term gets its roots and we ask for judicious scrutiny of this term, and can a sitting chief justice of Pakistan be made non functional by President of Pakistan on advice of the Chief executive and or any other constitutional body where CJ already has given

judgments against that Chief executive for mal administration and or false practices;

2. Whether the honourable Chief Justice of Pakistan can be sent on 'forced leave' applying Section 2 of the Judge's Compulsory Leave Order 1970, validated in 1975 under the validation of Laws Act 1975 and legal status and validity of that Order and application of that law and that act on the Chief justice of Pakistan.
3. Whether Acting Chief Justice may be appointed when Chief justice of Islamic Republic of Pakistan is able and available on the basis of 'innocent until proven guilty' legal test.
4. Whether Acting Chief Justice can be appointed without consultation of Sitting Chief Justice under article 180;
5. Whether acting Chief Justice in Article 180 means 'the Most senior Judge of the apex court available' or the most senior judge of the Supreme Court.
6. Whether filing of reference before Supreme Judicial Council will automatically take away the rights and privileges & perks or protocol plus the in born

constitutional rights of the Chief Justice of Pakistan and whether Chief Justice of Islamic Republic of Pakistan can be restrained, detained, put on house arrest, and can be manhandled (as obvious from pictures in the media) will all those acts not amount to contempt and bringing the office of the Chief Justice into disrepute and can an action be taken afterwards against the perpetrators on the basis of the media reports?

7. Whether fundamental right of Chief Justice of Pakistan as citizen of Pakistan of having access to court, right to have access to his legal team, right to consult a doctor at his will, right to freedom and liberty, right to express his views and move freely, can be restrained under any circumstances after filing a reference under Art. 209.

8. Whether Chief justice of Pakistan until removed judiciously by a successful reference by SJC can be mal handled, mistreated, and his words are not acted upon as if he ceases to be the Chief Justice of Pakistan by reason of a reference pending before a SJC, and will it not be against the rules of natural justice to declare someone guilty before a trial in particular the sitting Chief Justice of Pakistan.

We expect your speedy action *suo-moto* on this issue and request to consider this letter as a request to call a full court reference to decide the above questions. I am sure once the above questions of law are settled only then reference can proceed fairly as we have only one precedent so far in the case of President of Pakistan v Shaukat Ali PLD 1971 585 which is prior to the Constitution of Pakistan 1973 coming into force. We request your lordships guidance towards these important issues of law to bring the state of Pakistan out of a legal quagmire.

We are sure when the Apex judges will sit and ponder this most controversial reference in the Judicial history of Pakistan, they will come to an understanding how to proceed in the best interest of the country preserving rule of law and ensuring individual's interest to guarantee fairness and due process of law. History is in the making if today Lord Chief Justice Iftikhar Mohammed Choudhary is removed unconstitutionally as he is restrained at his house, what guarantee lies ahead that any future Chief Justice including your Lordship who tends to hear any controversial case against the Govt. may not be removed. We need future guarantees in this case and nothing in this world is given free without asking and fighting for it. It's a dangerous tendency and only Supreme Court itself from its own internal mechanism and wisdom can address and challenge it

and may save this institution by due consultation, wisdom, patience and honour and we wish you all the best in your endeavours to bring us all out of this constitutional crisis. We agree that personalities are not higher than national interest and sometimes, one ought to sacrifice personal pride and interest upon supreme national interest, and same maxim applies to our current rulers too.

Once again I am grateful for your access to us. Please do not hesitate to contact the Association at 01706-346011 if we can be of any assistance and we look forward to hearing from your Lordship a statement which has become a public demand, a surety of ‘justice’.

Yours faithfully,

Amjad Malik, MA, LL.M

**Solicitor-Advocate of the Supreme Court of England and
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Chair Association of Pakistani Lawyers (UK)

‘Condemnation over untimely knighthood of Rushdie’

UK Lawyers expressed anguish over untimely Knighthood

Association of Pakistani Lawyers a team of Pakistani origin lawyers, Solicitors, Barristers, & Judges in UK jointly express deepest dismay at blatant disregard to the 2 million Muslim sensitivities in UK and billions around the world whilst granting Knighthood to ‘Satanic Verses’ fame writer Salman Rushdie.

APL confirmed that this honour is given at a time when Muslims are working hard to bridge both communities after the events of September 11th and 7 July and are subject to victimization via various heavy handed laws and honouring those who cause the divide further will alienate the main stream community and will not go well with the Muslim Community and demanded withdrawal of that status forthwith as the writer’s contribution is not only conflicting but have caused to hurt billions of human souls around the world. British Government must own the responsibility and make amends of this lapse like they did at the death of Lady Diana the princess of hearts.

APL further expressed anguish at careless statements by Pakistani politicians and urge the communities to remain calm and use their right to protest in a maximum peaceful manner and discourage any attempts to use or stir violence even in their speeches.

APL pointed out that OIC must take notice and revisit their efforts to canvass Islamic countries to put joint diplomatic pressure on the grant of such unworthy honour and consider setting up Islamic highest court of all Islamic countries to issue a joint declaration against the writer and grant of such honour.

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18 June 2007

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‘Condemnation of expulsion orders against citizens of Pakistan’

UK Lawyers condemn issuing expulsion orders against Citizens of Pakistan and in particular Imran Khan a member of Parliament

Association of Pakistani Lawyers a team of Pakistani origin lawyers, Solicitors, Barristers, Judges in UK jointly condemn issuing exclusion orders against Senior lawyer(s) of the Higher Courts of Pakistan, Journalist(s), Human Rights Commission members, from one Province which is prima facie ultra vires and in violation of the various articles including Article 15 which entitles all citizens free movement in all the country and Article 25 of the Constitution of Pakistan 1973 which gives right to all citizens are equal in the eyes of law and state of affairs in Pakistan are not such that exclusion orders are issued at random in the interest of public and national security and APL will advise those affected to resort to courts for judicial review of such orders which on the face of it are unlawful.

APL condemns restriction of movement orders against member of Parliament Imran Khan and feel that if a member of Parliament, media personnel, human rights activists and lawyers

are made subject to those draconian orders, then how can we ensure freedom of movement to all citizens and promote federation as these orders will promote regionalism and will destroy the very principle on which Pakistan was made, and Judiciary is requested to take conscious notice of such orders.

APL further condemn the deteriorating law and order situation in Karachi as a result of which Karachi was under siege on 12 May 07. We also condemn over 6 hours long firing at AAJ TV which was already under fire and under notice by Media Regulatory Authority for carrying out its responsibility independently. We welcome SHC suo-moto notice of the killings and expect a detailed and just report of the committee pin pointing the cause of failure of Provincial administration and attach liability for criminal negligence on those who were responsible so that those may be brought to justice.

We all hope that Lawyers, media and Civil society's contribution is fruitful to bring Pakistan out of this constitutional crisis where there are indication(s) that Civil Society may be able to break the nexus of military and Judiciary for the first time since first elected Parliament was dismissed by then Governor Genreal Ghulam Mohammed and was certified as correct by the justice Muneer acting as Lord Chief Justice of SC. APL joins common man's voice which goes with the

lawyers, media and judges community of Pakistan and we hope that it reaches to those rulers who make decision(s) to listen to it and act accordingly for rule of law, justice and supremacy of Constitution to save the federation and country from imminent dangers.

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27 May 2007

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Kingdom***

‘Condemnation of blasts during political procession of former prime minister in Karachi’

Association of Pakistani Lawyers a team of Pakistani origin lawyers, Solicitors, Barristers, Judges in UK jointly condemn the blasts of 18 October during a political procession of former Prime Minister of Pakistan and they have jointly expressed their condolences to the families of the people who have lost their lives and expressed sympathies with those who are injured. APL demanded from Govt of the day to provide free medical aid to all of them indiscriminately.

APL demanded that the Sindh Govt and Governor Sindh who have failed to ensure law and order situation on this expected heavy turn out day must resign from their posts pending enquiry as this is the third major incident after the Nishtar Park blast, and 12th May massacre and now fatal disruption during Ms. Bhutto’s arrival in Karachi which calls for immediate action.

APL demands that SC appoints a judicial enquiry which is time barred and brings those to account and justice who have violated the law of the land as governmental enquiry will be a pointless exercise as we have seen on last 2 occasions.

APL further condemn the deteriorating law and order situation in Pakistan as a result of which situation like 12 May 07 is seen almost every other day in Pakistan and regionalism is promoted and Karachi has been made a 'no go' area for certain quarters and citizens of Pakistan. The government of the day must show political will to promote some integrity and tolerance to bear the voice of opposition which is their democratic right as they claim in their enlightened moderation charter and as it is the election year and level playing field must be ensured to two top political parties of the country which must be considered as a national asset. Political leaders however are advised not to stir ethnicity divide as the situation in Pakistan is extremely volatile and political parties in the run up to elections must also consider holding their processions at an open place or at stadiums in lieu of thorough fares to ensure maximum security arrangements and to avoid loss and damage of lives and properties.

APL further called for a broad based national reconciliation where all parties are truly represented to ensure initiation an open and frank public discussion in the supreme national interest with all political parties at a round table ensuring unconditional presence of all exiled leaders to discuss how an exit of military from national politics can be practically made

possible and how a fair and transparent elections can be held in Pakistan. Those consultations may discuss the mechanism of inducting an independent and reliable care taker set along with powerful election commissioner who will impartially hold elections which appears to be and are in fact transparent and fair. Those consultations with all parties will also discuss as to how the independence of judiciary can be secured as only a fair and independent judiciary can guarantee holding of a fair election(s) in Pakistan.

APL hopes that Lawyers, media and Civil society's contribution is fruitful to bring Pakistan out of this crisis to save the federation and country from imminent dangers.

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19 October 2007

‘Virtual interview with British Council’s Shezreen Shah’

Virtual Interview

Want to be introduced to the winner of the Young Human Rights Lawyer (Peter Duffy) Award of the year 2000 as well as the Young Pro Bono Solicitor Award 2001 in the UK?

Yes? Read on to find out...

In a rare virtual interview with Amjad Malik, British Council Islamabad's Shezreen Shah finds an extremely successful and dedicated professional who is strongly committed to his community in a foreign land.

Amjad Malik is a 32 year old Solicitor-Advocate of the Supreme Court of England and Wales who specialises in Immigration Law as well as helps female victims of domestic violence within Asian communities in the UK.

This is Amjad’s story in his words...

SS: Why did you choose the legal profession?

AM: I was very much impressed by the legendary lawyers of the land Mohammed Ali Jinnah, founder of Pakistan and always wanted to create a name for my services to the community.

SS: How was your interest generated in working for Asian females who are victims of domestic violence?

AM: It all started when a victim of domestic violence came with a case that she came to UK through marriage. Her husband tried to strangle her as he already had a relationship with a Sikh girl and had two children out of his relationship. I took that case

as a challenge and by the time I took it to the High Court for refusal of visa, I had 5 similar cases in that area.

'Amjad Malik, a solicitor advocate of the Supreme Court challenged the policy of domestic violence and sought declaration of incompatibility of that policy with Human Rights Law (article 3 &6) and also drew court's attention towards facts that women of Asian culture are reluctant to go to courts and police to seek justice against their husbands and society dislikes it.'

There is double punishment on these women as they are already victims and then the Home Office puts further burden on them to prove their misfortunes. Since this case and many other cases, including Naila Mahrouf's famous High court case, the Home Office has revised their policy. They have allowed other evidence to be used to prove these women's situation - which is a good sign. Now other evidence, such as police social services report, consultant and GP's reports will be used to prove violence. The Home Office has incorporated their policy under Para 289A in the Immigration Rules which will make life easier. But there must be an advice leaflet given to all female fiancée's and spouses coming from abroad to make them aware of their rights.

SS: In your opinion what are the main causes of domestic violence in Asian communities?

AM: I believe the main cause of such violence is due to strict visa requirements. I believe Asian girls should be granted permanent stay when they go to UK, in line with dependant children and mothers and relatives etc. When a British Citizen sponsors his relatives they get permanent stay. But when he takes his wife abroad, she gets a 1 year visa which is now changed to 2 years initial visa, turning into permanent if the marriage continues. This I believe is fundamentally wrong. It puts the sponsor in a driving seat and he and his whole British family turns the whole machinery in a horror movie style. On

the other hand that person from abroad becomes a slave of circumstances - especially girls - who have no voice in the matter. The second element is the effect of the Pakistani society in general. Here the court turns a blind eye on bilateral family issues and domestic violence – that are swept under the carpet for unknown reasons. Police try to send the girl to the same house where she is trying to run away from. There is a stigma attached to the core issues of divorce and the entire issue of medical conditions like depression, anxiety and post natal problems are non-existent. Even if they do exist, it does so in the higher middle class or upper class. There is a tendency of dealing with women issues very lethargically – thus showing a disinterested approach. The whole approach needs to be changed in the wake of Pakistan's Constitution that all citizens are equal in the eyes of law that services should be provided to all of them equally and that Law enforcing agencies should try to reduce tensions that exist between society at large and attitude towards women. Human rights groups in Pakistan are working but they need more funds and support to create awareness about female rights.

SS: What led you to specialise in immigration law within the legal profession?

AM: In UK I felt that the ethnic community faces a lot of problems due to their ignorance of British Immigration laws. Their lack of awareness makes them easy victims of unscrupulous immigration advisors who rip them off by charging them heavy fees, when the same advice is available on either free Legal Aid or through a charity. I was myself faced with a dilemma whether to practice criminal law or work in the Immigration field and help people in reducing their miseries. In the end I decided to work in the immigration field. I passed the CPE (Post Graduate Certificate in law), LPC (Post Graduate Diploma in Legal Practice) and then LLM (Master of Laws) from Huddersfield University from 1994-2000. I also passed the Diploma in Immigration Law in the year 2001. I am a member of Law Society's Immigration Panel, and am also a member of

Law Society's Immigration law Committee. I think I am the youngest Pakistani lawyer achieving that status – my age currently being 32. I was awarded 'Young Human Rights Lawyer '(Peter Duffy)' Award of the year 2000, for my excellent casework representations for Asian females who are victims of domestic violence. I also was named and awarded by Young Pro Bono Group the 'Young Pro Bono Solicitor Award 2001'. I sit on 'Foreign and Commonwealth Office Pro Bono Lawyer's panel' and am also a member of 'The North West Legal Services Commission Committee'.

SS: What do you feel are the major concerns of Pakistani origin people living in the UK?

AM: I believe Overseas Pakistani are concerned over the well being of their families economically and otherwise in Pakistan and they wish to help as much as they can. Secondly, they are always concerned about their country (homeland). They are alarmed with the Indo-Pak situation and worry about fear of wars. Their main worry is that their High Commission does not entertain their enquiries as it should be and they are always dependant on local community groups - which I am afraid are not up to date sometimes. They wish to send remittances to Pakistan trouble-free which is still in the offing. No proper procedure has yet been completely introduced to stop the business of 'hundi' private transfer of funds. Finally, the youth, the community is worried that their children are now reaching the age where they are to marry. Due to lack of understanding and clash of cultures, there are incidents of forced marriages etc that have hit the media lately. I think society needs to educate their elders as well as their youth about respecting local and national laws.

SS: So you feel that Pakistan would benefit from learning about best practices from the UK in your profession?

AM: I think merit needs to be promoted in Pakistani society - if you wish to see progress and far reaching results. It should not

be whom you know. It should be how much you know and I believe the society has huge potential to meet the targets of the 21st Century, as there is no dearth of talent and skill. Nepotism, class consciousness, prejudice and discrimination need to be eradicated through practical steps by encouraging youngsters to come forward and help society stand on its own grounds; morally, economically, physically and conscientiously.

SS: Would these best practices be implementable in Pakistan's context?

AM: It is possible when the higher-ups start making themselves accountable to the grass roots level, and vice versa. It is not possible if you exempt a certain class from accountability. Accountability should be crystal clear and self-righteousness should be taken as a pride and be promoted rather than discouraged.

Amjad Malik was being interviewed virtually by Shezreen Shah of British Council (Pakistan) in the Year 2003

The interview is also available on line at the following link of British Council:

<http://www.britishcouncil.org.pk/newsletter/graphics/iglwt931.pdf>